Supreme Court, U.S.
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No. 88-1569

IN THE SUPREME COURT OF
THE UNITED STATES
October Term, 1988

RICHARD H. AUSTIN, Michigan Secretary of State, and FRANK J. KELLEY, Michigan Attorney General,

Appellants,

v.

MICHIGAN STATE CHAMBER OF COMMERCE, a non-profit Michigan Corporation,

Appellee.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

JOINT APPENDIX

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APPEAL DOCKETED ON MARCH 10, 1989
PROBABLE JURISDICTION NOTED ON MAY 1, 1989

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

May 24, 1985	Plaintiff's Complaint filed with the U.S. District Court for the Western District of Michigan, Southern Division
May 24, 1985	Plaintiff filed Motion for Preliminary Injunction
May 31, 1985	Hearing on Plaintiff's Motion for Preliminary Injunction
June 24, 1985	Order entered denying Motion for Preliminary Injunction
February 10, 1986	Defendants filed Motion for Summary Judgment
April 7, 1986	Hearing on Defendants' Motion for Summary Judgment
May 7, 1986	Amended Order denying Defendants' Motion for Summary Judgment
May 9, 1986	Plaintiff filed Motion for Leave to Amend Complaint
May 9, 12 and June 12-13, 1986	Non-Jury Trial
June 13, 1986	Order entered granting Plaintiff's Motion to Amend Complaint
September 3, 1986	Judge Hillman's Opinion and Judgment were entered upholding constitutionality of the involved statute
September 17, 1986	Plaintiff's Notice of Appeal filed with the U.S. Court of Appeals for the Sixth Circuit

September 15, 1988	Opinion of the U.S. Court of Appeals for the Sixth Circuit
September 29, 1988	Defendants-Appellants filed Petition for Rehearing En Banc with the U.S. Court of Appeals for the Sixth Circuit
December 14, 1988	Order of the U.S. Court of Appeals for the Sixth Circuit denying Petition for Rehearing En Banc
December 27, 1988	Amended Order entered by the U.S. Court of Appeals for the Sixth Circuit denying Petition for Rehearing En Banc
March 3, 1989	Filing of Defendants-Appellants Notice of Appeal to the U.S. Court of Appeals for the Sixth Circuit
May 1, 1989	Probable Jurisdiction noted

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

MICHIGAN STATE CHAMBER OF COMMERCE, a non-profit Michigan corporation, **Plaintiff,** **v** **RICHARD H. AUSTIN, Michigan Secretary of State, and FRANK J. KELLEY, Michigan Attorney General,** **Defendants.**	**Case No. G85-496 CA** **Douglas W. Hillman** **U.S. District Judge**

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

NOW COMES the Plaintiff by and through its counsel, DYKEMA, GOSSETT, SPENCER, GOODNOW & TRIGG, and for its Complaint against the Defendants for Declaratory and Injunctive Relief, states as follows:

JURISDICTIONAL ALLEGATIONS

1. Plaintiff, Michigan State Chamber of Commerce, (the "State Chamber"), is a non-profit Michigan corporation which represents the interests and views of over 8000 private Michigan corporations and businesses engaged in civic, professional, commercial, industrial, agricultural and recreational enterprises, having its principal office located in the

City of Lansing, County of Ingham, State of Michigan.

2. Defendant, Richard H. Austin, is the State of Michigan Secretary of State, a constitutional state officer, who is charged with the administration and enforcement of the Campaign Finance Act, 1976 PA 388, as amended; MCLA 169.201 *et seq.* ("Act 388") and whose principal office is located in the City of Lansing, County of Ingham, Michigan.

3. Defendant, Frank J. Kelley, is Attorney General for the State of Michigan, a constitutional state officer, who is the principal law enforcement officer of the state, charged by law with the enforcement of Act 388, and whose principal office is located in the City of Lansing, County of Ingham, State of Michigan.

4. Jurisdiction is based on 28 USC 1331 and 28 USC 2201 for the reason that this action arises under the First and Fourteenth Amendments to the Constitution of the United States. This action also arises under Article 1, §§1, 2, 3 and 5 of the Michigan Constitution of 1963.

GENERAL ALLEGATIONS

Declaratory Relief-Actual Controversy

5. On or about December 30, 1976, the State of Michigan enacted Act 388 to, among other things, regulate political activity, campaign financing, campaign contributions and expenditures, anonymous contributions and campaign advertising and literature.

6. Section 54 of Act 388 prohibits public statements made by a corporation, or its officers, directors, stockholders, attorneys or agents acting for the corporation, to inform

the public of its views on important issues and debate concerning the nomination or election of a candidate for an elective office, when those statements require the making of independent expenditures. A person who knowingly violates this prohibition is guilty of a felony punishable by a fine of not more than $5,000 or imprisonment for not more than 3 years, or both, and if the person is other than an individual, the person may be fined up to $10,000.

7. Section 6(1) of Act 388 defines an "expenditure" to mean, in pertinent part: "a payment, donation, loan, pledge, or promise of payment of money or anything of ascertainable monetary value for goods, materials, services, or facilities in assistance of, or in opposition to, the nomination or election of a candidate".

8. Section 9(1) defines "independent expenditure" to mean "an expenditure as defined in section 6 by a person if the expenditure is not made at the direction of, or under the control of, another person and if the expenditure is not a contribution to a committee".

9. Because of their very nature, participation in public discussion on important issues and debate by corporations necessarily involves the making of "independent expenditures", as that term is defined in Act 388. Section 54, therefore, prohibits the participation of corporations and their officers, directors, stockholders, attorneys or agents acting for the corporation, in the public debate and discussion concerning the nomination or election of a candidate.

10. Act 388 does not place any similar prohibition or limitations on public statements on important issues and debate made by individuals, partnerships, unincorporated associations, labor organizations, or other legal entities or persons in the assistance of, or in opposition to, the nomination or election of candidate for political office.

11. The effect of Section 54 of Act 388 is to deny corporations, including the Plaintiff and its member corporations, the opportunity to actively participate in the public discussion of important issues and debate during the election process while authorizing and encouraging other noncorporate business entities, labor organizations, associations, and persons to participate without limitation or prohibition.

12. On or about June 10, 1985, a special election will be held for the Michigan House of Representatives 93rd Legislative District (the"Special Election") to fill a vacancy caused by the resignation of the incumbent.

13. The ability of Plaintiff and its member corporations to timely participate in the public discussion of important issues and debate concerning the Special Election has been absolutely precluded by Section 54 of Act 388 under threat of criminal felony prosecution.

14. Plaintiff has approved and will make a public statement by purchasing a one-quarter page advertisement in the Grand Rapids Press in support of Richard Bandstra, a candidate in the Special Election, but only if it is not subject to the felony provisions under Section 54.

15. Unless Plaintiff can engage in such activity in advance of the Special Election, it will be effectively precluded from timely participation in said election. The deadline for placing and paying for the advertisement is Wednesday, June 5, 1985 at 12:00 o'clock noon. See Affidavit of E. James Barrett, attached hereto as Exhibit "A" and incorporated herein by reference.

16. Plaintiff, therefore, requires declaratory relief in order to fully adjudicate its rights, duties, obligations, and immunities and those of its member corporations under the First and Fourteenth Amendments of the United States Constitution and Article 1, §§1, 2, 3, and 5 of the Michigan Constitution of 1963.

17. Declaratory relief is necessary to guide the present and future conduct of the Plaintiff and its member corporations and to preserve their rights under the Constitution and laws of the United States and the State of Michigan, particularly with respect to the pending Special Election.

Preliminary Injunctive Relief

18. Further, without a preliminary injunction against the enforcement of Section 54 of Act 388 with respect to independent expenditures, Plaintiff and its member corporations are left with making the impossible choice of (1) exercising their constitutional rights and risking threatened felony prosecutions, with the attendant criminal fines and imprisonment; *or* (2) obeying the prohibition contained in Act 388 and suppressing their constitutional rights, thereby foregoing any fair or meaningful participation in the Special Election.

19. Plaintiff and its member corporations desire to exercise their rights and to timely, effectively and fairly participate in the Special Election as well as other elections held in the State of Michigan.

20. Without an injunctive order preliminarily restraining and enjoining the enforcement of the prohibition of corporate independent expenditures contained in Section 54 of Act 388, Plaintiff and its member corporations will suffer and incur immediate and irreparable harm and damage through the suppression of their constitutional rights and

their ability to fully and fairly participate in the democratic election process, particularly with respect to the pending Special Election.

21. Defendants will suffer no harm through an injunctive order restraining the enforcement of the prohibition of corporate independent expenditures contained in Section 54 of Act 388 pending judicial resolution of this matter.

COUNT I

First Amendment - Free Expression and Association Rights

22. Plaintiff realleges and incorporates herein by reference each and every allegation contained in Paragraph 1 through 21.

23. The prohibition against independent expenditures by corporations contained in Section 54 of Act 388 impermissibly burdens Plaintiff's and its corporate members' constitutional rights to freely speak, write, express, and publish their views on all subjects as guaranteed by US Const, Am I, and Mich Const 1963, Art 1, §§1, 3 and 5.

24. The restrictions on the ability of Plaintiff and its corporate members to make public statements promoting or opposing the candidate of their choice fails to serve any substantial governmental interest, including the avoidance of either the reality or the appearance of corruption in the election process.

25. The prohibition on corporate independent expenditures contained in Section 54 of Act 388, and the Act's failure to so restrict labor organizations, partnerships, associations, and other persons clearly gives to one side of a debatable public question an advantage in expressing their views to the public, thereby clearly offending the free expression guarantees of corporate persons.

26. Plaintiff will make a public statement in support of Richard Bandstra, a candidate in the Special Election if Plaintiff will not be subject to criminal felony prosecution under Section 54. See affidavit of E. James Barrett attached as Exhibit "A".

27. Violations of Section 54 of Act 388 constitute felonies which are punishable by criminal fines and imprisonment.

28. Plaintiff and its member corporations require adjudication of the validity of Section 54 of Act 388 vis-a-vis its prohibition on corporate independent expenditures in order to guide their conduct and to preserve their rights as guaranteed by the state and federal constitutions.

29. Further, Plaintiff and its corporate members are justly fearful that if the Court does not enjoin enforcement of Section 54 of Act 388 as to corporate independent expenditures during the pendency of this action, they will be precluded from fully and fairly participating in the Special Election and any succeeding election, thereby suffering and incurring immediate and irreparable harm and damage.

COUNT II

Equal Protection of the Laws

30. Plaintiff realleges and incorporates herein by reference each and every allegation contained in Paragraphs 1 through 29, as set forth above.

31. Act 388 does not place any prohibition or other limitations on public discussion by individuals, partnerships, labor organizations, unincorporated associations, or other legal entities or persons.

32. The statutory prohibition against corporate independent expenditures impermissibly discriminates against Plaintiff and its corporate members in the enjoyment of their civil and political rights, without a compelling state interest therefor, in violation of their rights to the equal protection of the laws as guaranteed by US Const, Am XIV, and Mich Const 1963, Art 1, §2.

33. Even if a compelling state interest could be served by some limitation on corporate independent expenditures, the absolute prohibition set forth in Section 54 of Act 388 is not narrowly tailored to meet any such interest, being both over-inclusive and under-inclusive.

34. Enforcement of the prohibition on corporate independent expenditures gives unfair advantage to labor organizations and other unincorporated entities in expressing their views to the people regarding important and debatable public questions.

35. Plaintiff and its corporate members require adjudication of the validity of Section 54 of Act 388 vis-a-vis its prohibition on corporate independent expenditures in order to guide their conduct and to preserve their rights as guaranteed by the state and federal constitutions.

36. Further, Plaintiff and its corporate members are justly fearful that if the Court does not enjoin enforcement of Section 54 of Act 388 as to corporate independent expenditures during the pendency of this action, they will be precluded from fully and fairly participating in the Special

Election and any succeeding election, thereby suffering and incurring immediate and irreparable harm and damage.

RELIEF REQUESTED

WHEREFORE, Plaintiff, on behalf of itself and its members, prays this Honorable Court to:

A. Declare and adjudge its rights as follows:

(1) That the Act 388 prohibition on corporate independent expenditures made in the assistance of, or in opposition to, the nomination or election of a candidate for elective office, is unconstitutional, void and of no force or effect as violative of corporations' rights of free expression and association as guaranteed by US Const, Am I, and Mich Const 1963, Art 1, §§1, 3 and 5; and

(2) That the Act 388 prohibition on corporate independent expenditures made in the assistance of, or in opposition to, the nomination or election of a candidate for elective office is unconstitutional, void and of no force or effect as violative of corporations' rights to the equal protection of the laws as guaranteed by US Const, Am XIV and Mich Const 1963, Art 1, §2;

B. Permanently enjoin the enforcement of Section 54 of Act 388 with respect to corporate independent expenditures.

C. Preliminarily enjoin the enforcement of Section 54 of Act 388 with respect to corporate independent expenditures during the pendency of these proceedings.

D. Grant such other and further relief as the Court deems consistent with equity and good conscience.

MICHIGAN STATE CHAMBER
OF COMMERCE
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DATED: MAY 24, 1985

VERIFICATION OF COMPLAINT

/s/ E. James Barrett
E. James Barrett

STATE OF MICHIGAN }
COUNTY OF INGHAM } ss

On this 23 day of May, 1985, before me, a Notary Public, in and for said county personally appeared E. James Barrett, President, Michigan State Chamber of Commerce, Plaintiff herein, and duly authorized to act for the same, being first duly sworn, deposes and says that he has read the foregoing Verified Complaint for Declaratory and Injunctive Relief and that the same is true of his own knowledge and belief.

/s/ Debra K. Merrill
Notary Public, Ingham County,
Michigan
My Commission Expires: 9/15/87

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

MICHIGAN STATE CHAMBER OF COMMERCE,
a non-profit Michigan corporation,
Plaintiff,

v

RICHARD H. AUSTIN, Michigan Secretary
of State, and FRANK J. KELLEY,
Michigan Attorney General,
Defendants.

AFFIDAVIT OF E. JAMES BARRETT

STATE OF MICHIGAN }
COUNTY OF INGHAM } ss

E. JAMES BARRETT, being first duly sworn, deposes and says that if called to testify in the above-captioned matter, he can state the following based upon personal knowledge:

1. I am President and Chief Executive Officer of the Plaintiff Michigan State Chamber of Commerce ("State Chamber").

2. The State Chamber of Commerce is a Michigan non-profit corporation, which represents the views of Michigan's business community. More than 75% of the State Chamber's nearly 8,000 members are corporations.

3. As President and Chief Executive Officer of the State Chamber, I am authorized to make expenditures from the State Chamber treasury in order to publicly express its views

and the views of its members on social, civic, economic, and political issues.

4. On June 10, 1985 a Special Election will be held to fill the vacancy in the 93rd Michigan State House District created by the resignation of the incumbent. Richard Bandstra is a candidate for that office.

5. The State Chamber will purchase a one-quarter page advertisement in the *Grand Rapids Press* to run on Sunday, June 9, 1985 to publicly express its support of the election of Richard Bandstra as State Representative for the 93rd District if the State Chamber will not be subject to the criminal felony provisions contained in Section 54 of the Michigan Campaign Finance Law, MCLA 162.254 (hereafter "Section 54") for the purchasing of the advertisement.

6. The Grand Rapids Press has informed the State Chamber that the deadline for placing and paying for the advertisement is Wednesday, June 5, 1985 at 12:00 o'clock noon.

7. The advertisement will not be made at the direction of, or under the control of, another person including the candidate committee of Richard Bandstra.

8. The June 9, 1985 newspaper advertisement will carry the following disclaimer and identification in a place and print clearly visible and readable by an observer:

> Not Authorized by the Candidate Committee of Richard Bandstra. Paid for by the Michigan State Chamber of Commerce, Suite 400, 200 N. Washington Square, Lansing, MI 48933.

9. I have attached hereto a printers proof of the adver-

tisement which the State Chamber has prepared advocating the election of Richard Bandstra as State Representative which advertisement will be submitted to the *Grand Rapids Press* for publication if the State Chamber will not be subject to criminal felony prosecution under Section 54.

10. Section 54 puts the State Chamber to the impossible choice of (1) exercising its constitutional rights by running the advertisement and risking threatened felony prosecution, with the attendant criminal fines and penalties; *or* (2) obeying the restrictions contained in Section 54 and suppressing its constitutional rights thereby foregoing any opportunity to engage in the public discussion on important issues and debate involved in the Special Election.

11. As President and Chief Executive Officer of the State Chamber, I am authorized to employ Dykema, Gossett, Spencer, Goodnow & Trigg to represent the Michigan State Chamber of Commerce and its officers and directors in bringing any appropriate lawsuit on behalf of the State Chamber in a court of competent jurisdiction seeking a determination of the validity of Section 54 of the Michigan Campaign Finance Law (MCLA 169.254) as to the purchase of the advertisement.

FURTHER, AFFIANT SAYETH NOT.

/s/ E. James Barrett
E. James Barrett

Subscribed and sworn to before me, a Notary Public, in and for said County and State on the 23 day of May, 1985.

/s/ Debra K. Merrill
Debra K. Merrill, Notary Public Ingham County, Michigan
My Commission Expires: 9/15/87

Michigan Needs Richard Bandstra To Help Us Be Job Competitive Again

The Michigan State Chamber of Commerce, an organization of over 8,000 member companies, associations and local chambers of commerce, is committed to making Michigan more competitive for business investment and job creation. With that goal in mind, we'd like to share some facts with the electors in the 93rd House District before they vote in tomorrow's special election.

To be job competitive, Michigan needs to have fair regulatory policies on business regarding such important issues as workers' compensation and we need to encourage greater efficiency in state government by lowering the state personal income tax.

Currently, workers' compensation costs are 20% higher in Michigan than those in neighboring states. Why? Our eligibility standards are not the same as most other states. Too many people are allowed to qualify for too long a period of a time.

Many Grand Rapids businesses are competing with firms in other states having lower regulatory costs. Unless checked, this disadvantage may continue to cost Michigan jobs . . . jobs that are lost when businesses leave Michigan, expand out of state, or when out-state companies seeking to expand don't locate here in Michigan.

To ensure that Michigan is job competitive, we need legislators at the State Capitol who will show courage and stand up to special interests that advocate greater regulation and taxes.

The Michigan State Chamber of Commerce believes Richard Bandstra has the background and training to do the best job in Lansing for the people of the 93rd House District. We believe he will work to reduce workers' compensation costs and for an early rollback of the personal income tax rate.

The State Chamber is committed to job development in Michigan. We believe Richard Bandstra shares that commitment.

On Monday June 10th, Elect Richard Bandstra State Representative 93rd House District Special Election

MICHIGAN STATE CHAMBER OF COMMERCE

Not authorized by the Candidate Committee of Richard Bandstra
Paid for by the Michigan State Chamber of Commerce • Suite 400 200 N. Washington Square • Lansing, Michigan 48933

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

MICHIGAN STATE CHAMBER OF COMMERCE, a non-profit Michigan corporation, Plaintiff, v RICHARD H. AUSTIN, Secretary of State, and FRANK J. KELLEY, Attorney General, Defendants.	No. G85-496 CA Honorable Douglas W. Hillman

ANSWER

NOW COME DEFENDANTS by their attorneys, Frank J. Kelley, Attorney General and Gary P. Gordon and Richard P. Gartner, Assistant Attorneys General, and in answer to Plaintiff's Complaint state as follows:

1. Defendants admit generally that the Michigan State Chamber of Commerce is a nonprofit Michigan corporation having its principle office in the City of Lansing, Michigan. As to the specific allegations relating to the purposes of the Chamber of Commerce and the number of entities represented by the Chamber of Commerce, Defendants lack sufficient information to form a belief as to the truth thereof and, accordingly, neither admit nor deny the same.

2-3. Defendants admit the allegations contained in paragraphs 2 and 3.

4. The allegations contained in paragraph 4 constitute conclusions of law to which no answer is required and, accordingly, Defendants neither admit nor deny the same.

5. Defendants admit that 1976 PA 388; MCLA 169.201 *et seq*; MSA 4.1703(1) *et seq*, (hereinafter "the Act"), was enacted on or about December 30, 1976 and generally relates to those areas of concern listed in paragraph 5. Further answering, Defendants assert that 1976 PA 388 speaks for itself and should be referred to in its entirety to ascertain the purposes and areas of regulation encompassed in the Act.

6. Defendants neither admit nor deny the legal conclusions set forth in paragraph 6 summarizing §54 of 1976 PA 388 and further answer that the Act speaks for itself and should be referred to in its entirety for its meaning. Further answering, Defendants admit the penalty referred to in paragraph 6 is correct.

7. Defendants admit that a portion of §6(1) of the Act is quoted correctly in paragraph 7. Further answering, Defendants assert that the Act speaks for itself and must be read in its entirety.

8. Defendants admit that a portion of §9(1) of the Act is correctly quoted in paragraph 8 but further answer that the Act speaks for itself and must be referred to in its entirety for purposes of ascertaining its meaning and definitions.

9. Defendants deny the allegations contained in paragraph 9 because they are untrue. Further answering, Defendants assert that corporations are allowed to establish separate segregated funds for the purpose of participating in public discussion and debate on important issues and that, accordingly, corporations are allowed great participation in public debate and discussion concerning the nomination or

election of candidates. Further answering, to the extent there are remaining conclusions of law in this paragraph, Defendants are not required to answer and, accordingly, leave Plaintiff to its proofs. Further answering, corporate officers, directors, stockholders, attorneys or agents of the corporation are allowed to fully participate as individuals in the electoral process. Additionally, the Act allows a corporation to communicate utilizing corporate funds with its shareholders and members regarding political positions of the corporation. Finally, corporations are not precluded from participating in the political process with regard to important issues in that corporations are allowed to make unlimited independent expenditures in support or opposition to ballot proposals and may contribute up to $40,000 to ballot question committees.

10. Defendants neither admit nor deny the legal conclusions summarizing 1976 PA 388 contained in paragraph 10 and assert that the Act speaks for itself. Further answering, Defendants assert that the Act contains various limitations on the amount and form of expenditures that may be made by various entities.

11. Defendants deny the legal conclusions and factual allegations contained in paragraph 11 for the reason they are untrue. Further answering, Defendants assert that to the extent that paragraph 11 attempts to summarize the effect of the Act, the Act must be read in its entirety and speaks for itself. Further answering, corporate officers, directors, stockholders, attorneys or agents of the corporation are allowed to fully participate as individuals in the electoral process. Additionally, the Act allows a corporation to communicate utilizing corporate funds with its shareholders and members regarding political positions of the corporation. Finally, corporations are not precluded from participating in the political process with regard to important issues in that corporations are allowed to make unlimited independent expenditures in support or opposition to ballot proposals and may contribute up to $40,000 to ballot question committees.

12. Defendants admit the allegations contained in paragraph 12.

13. Defendants deny the legal conclusions and factual allegations contained in paragraph 13 for the reason they are untrue. Further answering, Defendants assert that Plaintiff is allowed to participate in any special election through the use of separate segregated funds which are allowed to be established through the use of corporate funds. Further answering, corporate officers, directors, stockholders, attorneys or agents of the corporation are allowed to fully participate as individuals in the electoral process. Additionally, the Act allows a corporation to communicate utilizing corporate funds with its shareholders and members regarding political positions of the corporation. Finally, corporations are not precluded from participating in the political process with regard to important issues in that corporations are allowed to make unlimited independent expenditures in support or opposition to ballot proposals and may contribute up to $40,000 to ballot question committees.

14. Defendants are without sufficient information to form a belief as to the truth of the allegations of paragraph 14 and neither admit nor deny the same and leave Plaintiff to its proof.

15. Defendants deny any allegations asserting that Plaintiff will not be allowed to participate in the special election referred to in the preceding paragraphs. To the extent that paragraph 15 constitutes conclusions of law, Defendants are not required to answer same and, accordingly, leave Plaintiff to its proofs. Further answer, as to the remaining factual alle-

gations in paragraph 15, Defendants lack sufficient information upon which to form a belief as to the truth of the same and, accordingly, leave Plaintiff to its proofs.

16. Paragraph 16 constitutes legal conclusions to which no answer is required and, accordingly, Defendants neither admit nor deny same and leave Plaintiff to its proofs.

17. The allegations of paragraph 17 constitute conclusions of law to which no answer is required and, accordingly, none is presented. To the extent that paragraph 17 constitutes allegations of fact, Defendants deny the same because they are untrue.

18. Paragraph 18 constitutes conclusions of law to which no answer is required regarding the impact of § 54 of the Act. To the extent that paragraph 18 constitutes allegations of fact, Defendants deny the same as being untrue.

19. Defendants lack sufficient information to form a belief as to the truth of the allegations contained in paragraph 19 and, accordingly, neither admit nor deny the same and leave Plaintiff to its proofs. Further answering, to the extent that paragraph 19 is an assertion that Plaintiff has been denied timely, effective and fair participation in elections in the State of Michigan, the same is denied as being untrue.

20. Defendants deny the legal conclusions and factual allegations contained in paragraph 20 for the reason they are untrue.

21. To the extent that paragraph 21 constitutes conclusions of law, no answer is required and, accordingly, none is presented. Further answering, Defendants deny that no harm will be suffered through the issuance of an injunction restraining enforcement of the Act. Defendants assert that

the Act is a valid and legal policy statement of the people of the State of Michigan enacted by its Legislature and that by restraining enforcement of the Act, *prima facie* harm is incurred by the people of the State of Michigan through the voiding of a validly enacted and constitutional regulation preventing undue corporate influence in the electoral process. Further answering, Defendants assert that should enforcement of the Act be enjoined, the purity of Michigan elections will be threatened and/or impaired allowing undue influence or the appearance thereof by corporations to take place contrary to the policy adopted by the people of the State of Michigan through enactment of the Campaign Finance Act.

22. Defendants reallege and incorporate by reference each and every answer contained in paragraph 1 through 21.

23. Paragraph 23 constitutes conclusions of law to which no answer is required. However, Defendants deny the conclusions of law as being incorrect and untrue.

24. Defendants deny the allegations of paragraph 24 for the reason they are untrue.

25. To the extent that the allegations of paragraph 25 constitute legal conclusions, no answer is required, however, Defendants deny the conclusions as untrue. Further answering, to the extent that paragraph 25 constitutes factual allegations, Defendants deny the same as being untrue.

26. Defendants lack sufficient information to form a belief as to the truth of the allegations of paragraph 26 and accordingly, neither admit nor deny the same and leave Plaintiff to its proofs.

27. Defendants admit the allegations contained in paragraph 27.

28. Defendants deny the legal conclusions contained in paragraph 28 for the reason they are untrue. Further answering, Defendants assert that there are no constitutional rights of Plaintiff being violated by the provisions of § 54, rather § 54 acts to preserve the purity and to prevent the appearance of corruption of the Michigan electoral process.

29. Defendants lack sufficient information to form a belief as to whether Plaintiff and its members are "fearful" and, accordingly, leave Plaintiff to its proofs as to that allegation. Further answering, Defendants deny the remaining legal conclusions and factual allegations contained in paragraph 29 for the reason they are untrue.

30. Defendants reallege and incorporate by reference every answer contained in paragraphs 1 through 29.

31. Paragraph 31 constitutes legal conclusions to which no answer is required and, accordingly, Defendants do not answer the same. Further answering, Defendants assert that the Campaign Finance Act speaks for itself and does, indeed, provide certain limitations on campaign contributions, expenditure and other participation by individuals, partnerships, labor organizations, unincoporated associations and other legal entitities or persons.

32. Paragraph 32 constitutes legal conclusions to which no answer is required, however, Defendants deny the same for the reason they are untrue.

33. Paragraph 33 constitutes legal conclusions to which no answer is required, however, Defendants deny the same for the reason they are untrue.

34. To the extent that paragraph 34 constitutes legal conclusions, no answer is required and, accordingly, none is provided. Further answering, Defendants deny the factual allegations contained in paragraph 34 for the reason they are untrue.

35. Paragraph 35 constitutes legal conclusions to which no answer is required, however, Defendants deny the same for the reason they are untrue.

36. Defendants lack sufficient information to form a belief as to whether Plaintiff and its members are "fearful" and, accordingly, leave Plaintiff to its proofs as to that allegation. Further answering, Defendants deny the remaining legal conclusions and factual allegations contained in paragraph 29 for the reason they are untrue.

AFFIRMATIVE DEFENSES

The Defendants rely upon the following affirmative defenses in response to Plaintiff's Complaint, however, Defendants reserve the right to assert other affirmative defenses as their applicability becomes apparent through the course of discovery and other proceedings in this matter:

1. Plaintiff's Complaint should be barred by the doctrine of laches in that the Act complained of herein was enacted in 1976 and in one form or another the State of Michigan has prevented independent corporate participation on behalf of or in opposition to candidates since approximately 1913.

2. This Court should abstain from hearing of this case due to the fact that the Michigan Supreme Court in *Advisory Opinion 1975 PA 227*, 396 Mich 465, 490; 242 NW2d 3 (1976) has specifically addressed the constitutionality of pro-

hibiting corporate contributions or expenditures for the purpose of nominating or election of a candidate under a challenge raising questions of equal protection and freedom of speech. The Court, in issuing the nonbinding advisory opinion, had benefit of the position of the Michigan State Chamber of Commerce, Plaintiff herein, as amicus. Accordingly, the Michigan Courts have addressed this issue generally regarding the interpretation of Michigan law as applied to Michigan elections thereby suggesting that this Court should exercise the doctrine of judicial abstention in favor of an action to be brought in the Michigan Courts.

WHEREFORE, Defendants respectfully request this Court to deny all relief to Plaintiff, to uphold the validity and constitutionality of the Michigan Campaign Finance Act and to further order such attorney fees and costs and other expenses to Defendants as the Court may adjudicate proper. Alternatively, Defendants respectfully request this Court to dismiss the case or hold it in abeyance pursuant to the doctrine of abstention and require the Chamber of Commerce to bring said action in the Michigan Courts requesting an interpretation of Michigan law as applied to Michigan elections.

Respectfully submitted,

FRANK J. KELLEY
Attorney General

Gary P. Gordon
Richard P. Gartner
Assistant Attorneys General

Attorneys for Defendants

Business Address:
650 Law Building
525 West Ottawa Street
Lansing, MI 48913
(517) 373-6434

Dated: June 24, 1985

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

MICHIGAN STATE CHAMBER OF COMMERCE, a non-profit Michigan corporation, Plaintiff, v RICHARD H. AUSTIN, Secretary of State, and FRANK J. KELLEY, Attorney General, Defendants.	Case No. G 85-496-CA HON. DOUGLAS W. HILLMAN

MOTION FOR LEAVE
TO AMEND PLAINTIFF'S VERIFIED
COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF

NOW COMES the Plaintiff by and through its counsel, Dykema, Gossett, Spencer, Goodnow & Trigg, and moves the Court for leave to amend its Verified Complaint for Declaratory and Injunctive Relief, dated May 24, 1985, as follows:

1. Amend paragraph 31 to add: "or to media-related corporations for any news story, commentary or editorial."

2. Amend paragraph 34 by inserting ", media-related corporations" after "labor organizations."

A proposed Order is attached hereto for the convenience of the parties and the Court.

Respectfully submitted,

DYKEMA, GOSSETT, SPENCER,
GOODNOW & TRIGG
Attorneys for Plaintiff,
Michigan State
Chamber of Commerce
By: /s/ Joel M. Boyden
Joel M. Boyden (P11073)
Richard D. McLellan (P17503)
William J. Perrone (P27591)
800 Michigan National Tower
Lansing, Michigan 48933
Telephone: (517) 374-9100

Date: May 9, 1986

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

MICHIGAN STATE CHAMBER OF COMMERCE, a non-profit Michigan corporation, Plaintiff, v RICHARD H. AUSTIN, Secretary of State, and FRANK J. KELLEY, Attorney General, Defendants.	Case No. G 85-496-CA HON. DOUGLAS W. HILLMAN

ORDER AMENDING
PLAINTIFF'S VERIFIED COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF

At a session of said Court on the 13th day of June, 1986, held in the City of Grand Rapids, Michigan.

This matter having come on to be heard upon Plaintiff's Verified Complaint for Declaratory and Injunctive Relief, arguments of counsel having been heard and the Court having been fully advised in the premises;

IT IS HEREBY ORDERED that Plaintiff's Verified Complaint for Declaratory and Injunctive Relief, dated May 24, 1985, be and the same is hereby amended as follows:

1. Paragraph 31 is amended to add: "or to media-related corporations for any news story, commentary or editorial."

2. Paragraph 34 is amended to insert ", media-related corporations" after "labor organizations."

/s/ Douglas W. Hillman
DOUGLAS W. HILLMAN
DISTRICT JUDGE

Countersigned:

Court Clerk

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHIGAN STATE CHAMBER OF COMMERCE, a non-profit Michigan corporation, Plaintiff, v RICHARD H. AUSTIN, Secretary of State, and FRANK J. KELLEY, Attorney General, Defendants.	Case No. G 85-496-CA HONORABLE DOUGLAS W. HILLMAN

DEFENDANTS' ANSWER TO PLAINTIFF'S AMENDED COMPLAINT

NOW COME Defendants Richard H. Austin, Secretary of State of the State of Michigan, and Frank J. Kelley, Attorney General of the State of Michigan, by and through their attorneys, Frank J. Kelley, Attorney General, and Gary P. Gordon and Richard P. Gartner, Assistant Attorneys General, and make their answer to Plaintiff's Amended Complaint, respectfully representing to this Court as follows:

31. In answer to paragraph 31 of the Amended Complaint, Defendants assert that the allegations contained therein are conclusions of law requiring no answer.

34. In answer to paragraph 34 of the Amended Complaint, Defendants deny the allegations contained therein for the reason that such allegations are not true.

RELIEF

WHEREFORE, Defendants respectfully request this Honorable Court to dismiss Plaintiff's Amended Complaint with prejudice.

Respectfully submitted,

FRANK J. KELLEY
Attorney General

Gary P. Gordon

Richard P. Gartner
Assistant Attorneys General

Attorneys for Defendants

Business Address:
600 Law Building
525 West Ottawa Street
Lansing, MI 48913
(517) 373-6434

Dated: June 25, 1986

UNITED STATES OF AMERICA
DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHIGAN STATE CHAMBER OF COMMERCE, a non-profit Michigan corporation, Plaintiff, v. RICHARD H. AUSTIN, Michigan Secretary of State, and FRANK J. KELLEY, Michigan Attorney General, Defendants.	Case No. G 85-496-CA5 NOTICE OF APPEAL

Notice is hereby given that the Michigan State Chamber of Commerce, Plaintiff above-named, hereby appeals to the United States Court of Appeals for the Sixth Circuit from the Order entering judgment in favor of Defendants and against the Plaintiff entered in this action on September 3, 1986.

Respectfully submitted,

DYKEMA, GOSSETT, SPENCER,
GOODNOW & TRIGG
Attorneys for Plaintiff
Michigan State Chamber
of Commerce

By: /s/ Joel M. Boyden
Joel M. Boyden (P11073)
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(517) 374-9174

Date: 9/16/86, 1986

INDEX TO TRIAL EXHIBITS
PLAINTIFF'S EXHIBITS

Exhibit Designation	*Description*	*Appendix Page Reference*
Plaintiff's Ex 1	Resume of H. Richard Mayberry, Jr.	
Plaintiff's Ex 3	1985-1986 Michigan Directory, prepared by Michigan State Chamber of Commerce	40a
Plaintiff's Ex 4	An Information & Referral Directory, United Way of Michigan Member Services	
Plaintiff's Ex 5	H. Richard Mayberry, Jr.'s Tables Ia, Ib, II, IIa and IIb	
Plaintiff's Ex 6	Compilation of Federal Election Commission Reports	
Plaintiff's Ex 7	*Managing Corporate Political Action Committees*, The Conference Board, Report No. 880	
Plaintiff's Ex 9	By-Laws of the Michigan State Chamber of Commerce, Revised April 24, 1980	43a
Plaintiff's Ex 10	Michigan State Chamber of Commerce, Board of Directors, 1985-1986	
Plaintiff's Ex 11	1976 Journal of the Senate, September 29, 1976	
Plaintiff's Ex 12	1976 Journal of the Senate, September 30, 1976	
Plaintiff's Ex 13	*The Grand Rapids Press* editorial, June 7, 1985	57a

Exhibit Designation	*Description*	*Appendix Page Reference*
Plaintiff's Ex 14	Proposed advertisement for Richard Bandstra	60a
Plaintiff's Ex 15	AEL-CIO Stipulation and Order in *Republican National Committee* v *Federal Election Commission*, United States District Court for the Southern District of New York, No. 78 Civ. 2783 (LPG)	
Plaintiff's Ex 16	UAW Stipulation and Order in *Republican National Committee* v *Federal Election Commission*, United States District Court for the Southern District of New York, No. 78 Civ. 2783 (LPG)	

DEFENDANTS' EXHIBITS

Defendants' Ex 1	Edwin M. Epstein Bibliography
Defendants' Ex 2	Edwin M. Epstein Vita
Defendants' Ex 3	Edwin M. Epstein Tables 1-9
Defendants' Ex 4a	Michigan Department of State, Campaign Expenditures Report, CF/0030
Defendants' Ex 4b	Michigan Department of State, Campaign Expenditures Report, CF/0040

Exhibit Designation	*Description*	*Appendix Page Reference*
Defendants' Ex 5	Memorandum from Senator John M. Engler to Senate Rules Committee Members, dated August 27, 1985 regarding PAC Contributions in the 1983-1984 Election Cycle.....	
Defendants' Ex 6	1984 Statistical Report for Candidate, Independent, Political and Ballot Question Committees, prepared by Michigan Department of State	
Defendants' Ex 7a	Bill Analysis of House Bill 5250, Dated June 25, 1975 ...	
Defendants' Ex 7b	Bill Analysis of House Bill 5250, dated July 22, 1975	
Defendants' Ex 7c	Bill Analysis of House Bill 5250, dated August 7, 1975...	
Defendants' Ex 7d	Bill Analysis of Senate Bill 1570, dated December 17, 1976	
Defendants' Ex 8	1984 Michigan PAC Directory, prepared by Michigan State Chamber of Commerce	
Defendants' Ex 9	Director of Business and Professional State Level Political Action Committees in Michigan, April 1, 1979, prepared by Michigan State Chamber of Commerce	
Defendants' Ex 10	Independent and Political Committee Special Election	

Exhibit Designation	*Description*	*Appendix Page Reference*
	Data 1979-1984, prepared by Michigan Department of State.	
Defendants' Ex 11	*Tuscola County Advisor* Advertisement, November 10, 1985 .	
Defendants' Ex 12	*Bay City Times* Advertisement, November 6, 1983	
Defendants' Ex 13	B*ay City Times* Advertisement, August 5, 1984	
Defendants' Exs 14-36	Certified copies of Articles of Incorporation of 22 incorporated labor unions in Michigan	
Defendants' Ex 37a	Article from *Campaigns and Elections*, written by H. Richard Mayberry, Jr., Summer, 1980	
Defendants' Ex 37b	Article from *Campaigns and Elections*, written by H. Richard Mayberry, Jr., Fall, 1980	
Defendants' Ex 37c	Article from *Campaigns and Elections*, written by H. Richard Mayberry, Jr., Spring, 1981	
Defendants' Ex 37d	Article from *Campaigns and Elections*, written by H. Richard Mayberry, Jr., Winter, 1981	
Defendants' Ex 37e	Article from *Campaigns and Elections*, written by H. Richard Mayberry Jr., Summer, 1981	

PLAINTIFFS EXHIBIT 3

PLAINTIFFS EXHIBIT 3

About This Directory . . .

The State Chamber is pleased to present its 1985 - 86 Michigan Directory. This one-of-a-kind publication is valued throughout Michigan, and beyond, as a handy and practical resource guide to local chambers of commerce and trade and professional associations.

Michigan Directory is intended to provide ready access to names, phone numbers and office locations that can be of assistance to you on a wide variety of issues.

This edition also includes convention and visitors bureaus, and selected state departments. As an added service, we are offering address labels of the listed local chambers and associations (see the back page for ordering and cost details).

Michigan Directory serves as the State Chamber's invitation for business, local chambers, trade and professional associations and state departments to engage in open dialogue, united action and consistent cooperation to achieve these common goals: more jobs for the people of Michigan, greater opportunities for business and continued improvement of Michigan's economy.

We appreciate the assistance of all those who provided us with current information. If you have any corrections or additions to this directory, or ideas for future editions, please contact Phil Guyeskey, Manager of Small Business Programs, at the State Chamber.

Jim Barrett

Jim Barrett, President
Michigan State Chamber of Commerce

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MICHIGAN STATE CHAMBER OF COMMERCE

200 N. Washington Sq.
Suite 400
Lansing, MI 48933

Price: $3.50 - State Chamber Members
$7.00 - Non-members

PLAINTIFFS EXHIBIT 3

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State Chamber Staff . . . . . Inside Back Cover

The State Chamber is . . .

. . . a non-profit organization of more than 8,000 businesses, local chambers of commerce, and trade and professional associations. Formed in 1959 to represent a broad cross-section of business interests, the State Chamber's membership is made up of about 80% small business firms which employ less than 100 persons.

The State Chamber's mission is to advance human progress through an economic, political and social system based on individual freedom, incentive, initiative, opportunity and responsibility.

The State Chamber seeks to promote conditions favorable to the economic development and expansion of job opportunities in Michigan. Its purpose, also, is to analyze existing and proposed laws, rules and regulations and advise State Chamber members and the general public of their impact on Michigan's economic climate.

As Michigan's leading business advocate, the State Chamber actively speaks out on legislative, political, legal, economic and social issues that affect the business community.

The State Chamber also provides a wide variety of membership services—including regular and special publications, legislative briefings, group insurance, a business hot-line, and seminars—designed to help members operate effectively, profitably and responsibly.

PLAINTIFF'S EXHIBIT 9

BY-LAWS OF THE MICHIGAN STATE CHAMBER OF COMMERCE

Revised April 24, 1980

1. *Name and Location.* The name of this association shall be the Michigan State Chamber of Commerce, a non-profit corporation, incorporated in the State of Michigan. The offices of the association shall be located at Lansing, Michigan.

2. *Objectives and Purposes.* The objectives and purposes of the association as stated in the Articles of Incorporation shall be:

   A. In general, to endeavor to promote conditions favorable to the economic development of the State of Michigan and the preservation of and enhancement of the American System of private enterprise.

   B. To analyze, compile and disseminate information on laws and regulations of interest to the members, and to determine and make known to government the views of the business community relative to any such matters.

   C. To further the training and education of the membership by means of educational materials, seminars, conventions, bulletins, newsletters, reports and technical materials.

   D. To function in the public interest by encouraging the maintenance and observance of ethical business practices and standards of conduct.

E. To collect data and make investigations and surveys relative to matters of social, civic, and economic importance to the State of Michigan.

F. To receive expenditures and make contributions for political purposes: to establish, administer and solicit contributions to a political action committee; to perform any other acts of a political nature permitted by the laws of the State of Michigan.

G. To cooperate with other organizations formed for similar purposes.

H. To engage in any activity within the purposes for which Michigan non-profit corporations may be organized under Act 327 of the Public Acts of 1931, as amended, which is consistent with exemption from Federal Income Tax under Paragraph 501(c)(6) of the Internal Revenue Code.

3. *Membership.* The membership of the Michigan State Chamber of Commerce shall be divided into four classifications.

A. *Individual.* Any individual is eligible for individual membership.

B. *Firm.* Any person, corporation or partnership doing business in Michigan is eligible for a firm membership.

C. *Organization.* Any group or association formed for the purpose of carrying on lawful activity for the economic or social welfare of the State of Michigan or for the economic or social welfare of businesses or professions located within the State of Michigan is eligible to become organization members.

D. *Associate or Honorary.* The Board of Directors may provide for associate or honorary members and may prescribe the qualifications and membership rights for such associate or honorary members. Associate or honorary members shall not vote or be eligible to serve as a Director or officer.

4. *Application for Membership.* All applicants for membership subscribing to the objectives of the Michigan State Chamber of Commerce shall complete and sign the form of application provided and shall submit the application to the President of the Chamber. Admission of all applicants for membership shall be by vote of the Board of Directors, or in such other manner as the Board of Directors may determine.

Removal. Members of any classification may be removed from membership by the President for cause by a two-thirds vote of the members of the Executive Committee. For any cause other than non-payment of dues, removal shall occur only after the member complained against has been advised of the complaint lodged against the member and has been given reasonable opportunity for defense including the opportunity to appear in person and to be represented by counsel. Sufficient cause for suspension or removal shall be violation of the By-laws or any lawful rule or practice duly adopted by the State Chamber, or any other conduct prejudicial to the interest of the State Chamber.

5. *Dues.* The dues shall be at the discretion of the Board of Directors who will periodically set a schedule of such dues. Annual dues shall be payable in advance. Failure to pay dues within 30 days after notice that such dues are payable shall cause the member to be delinquent and he or she shall be sent a second notice. After such second notice the member shall

not be in good standing until all dues in arrears are paid. A failure to pay dues within three months after they shall become due shall be grounds for suspension or expulsion at the discretion of the Board of Directors.

6. *Fiscal Year.* The fiscal year of the Michigan State Chamber of Commerce shall be from July 1 to June 30.

7. *Representation.* Each individual and firm member shall have one vote on any matter voted on by the members; provided, however, that the Board of Directors may by notification suspend voting privileges of a member or members who are officers of or employees of a corporation, partnership or organization which is eligible for membership in the Chamber but which has not joined the Chamber for reasons that in the opinion of the Board such firm is using individual membership of its employees to avoid firm or organization membership in the Chamber.

Each member whose dues shall exceed $100.00 per year shall have one vote for each $100.00 of its annual dues not to exceed ten votes in number. An organization member shall have one vote for its first 100 members or less and one additional vote for an additional 200 members or fractions thereof but in no event shall any organization member have more than five votes for its organization. In reference herein, members shall mean membership in such organization and not membership in the Michigan State Chamber of Commerce. An Executive Officer of a corporation or partnership or organization or any member or any other employee of such corporation, partnership or organization as may be designated by the managing

body or Executive Officer of such corporation, partnership or organization may vote and act for such corporation upon notice being given to the Chief Executive Officer of the Michigan State Chamber of Commerce that such officer or employee is the authorized representative of such corporation, partnership or organization in the Michigan State Chamber of Commerce.

BOARD OF DIRECTORS

8. *Districts.* To insure the representation on the Board of Directors from all sections of the State as well as for administrative and other purposes of the Michigan State Chamber of Commerce, the State shall be divided into the following eight districts:

DISTRICT NO. 1 (Upper Peninsula) would include the counties of Keweenaw, Gogebic, Ontonagon, Houghton, Baraga, Iron, Marquette, Dickinson, Menominee, Delta, Alger, Schoolcraft, Luce, Mackinac and Chippewa.

DISTRICT NO. 2 (Northern) would include the counties of Emmet, Lake, Cheboygan, Presque Isle, Leelanau, Antrim, Otsego, Montmorency, Alpena, Benzie, Grand Traverse, Kalkaska, Crawford, Oscoda, Alcona, Manistee, Wexford, Missaukee, Roscommon, Ogemaw, Iosco, Mason, Osceola, Clare, Gladwin, Arenac and Charlevoix.

DISTRICT NO. 3 (West Central) would include the counties of Oceana, Newaygo, Mecosta, Isabella, Muskegon, Ottawa, Kent, Montcalm and Ionia.

DISTRICT NO. 4 (East Central) would include the counties of Midland, Bay, Huron, Gratiot, Saginaw, Tuscola, Sanilac, Genesee, Lapeer and St. Clair.

DISTRICT NO. 5 (Southwestern) would include the counties of Berrien, Cass, St. Joseph, Kalamazoo, Barry, Allegan, Calhoun and Van Buren.

DISTRICT NO. 6 (South Central) would include the counties of Eaton, Ingham, Clinton, Jackson, Branch, Hillsdale, Lenawee and Shiawassee.

DISTRICT NO. 7 (Southeastern) would include the counties of Macomb, Oakland and Livingston.

DISTRICT NO. 8 (Lower Southeastern) would include the counties of Wayne, Monroe and Washtenaw.

9. *Composition of Board.* The Board of Directors shall consist of the following number and classes of Directors whose manner of election and qualification shall be as follows:

A. *District Directors.* Six Directors shall be elected from each of Districts Number 1, 2, 3, 4, 5, and 6, and fifteen Directors shall be elected from both Districts Number 7 and 8. A District Director shall be a resident or employed in the district from which he or she is elected.

B. *Directors-At-Large.* At least 12 and as many as 18 Directors-at-Large shall, as determined by the Board of Directors, be elected at-large without regard to place of residence or place of employment.

C. *Local Chamber Director.* One director shall be a local Chamber of Commerce executive serving as an at-large member for a one year term. The Board of Directors of the Michigan Chamber of

Commerce Executives shall recommend to the Board of Directors a candidate for Chamber Executive Director.

D. *Officer Directors.* The members of the Executive Committee shall be the officer directors.

E. *Term.* Each District Director and each Director-at-Large shall hold office for a term of two years, or until a successor has been elected and qualified. After serving three consecutive terms as director, an interval of two years shall elapse before a District Director or a Director-at-Large may be re-elected as a District Director or as a Director-at-Large.

F. *Qualifications.* No person may serve as a Director unless he or she shall hold an individual membership or is a representative, an officer or partner of a firm or organization holding membership.

G. *Transition Provision.* Notwithstanding the provisions of Paragraphs A and B of this Section 9, the following numbers of District Directors and Directors-at-Large shall be elected from Districts 7 and 8 and at-large during a transition period ending June 30, 1983:

(i) Fiscal Year 1980-81: District 7, not more than 14 Directors; District 8, not more than 21 Directors; At-Large, not more than 12 Directors.

(ii) Fiscal Year 1981-82: District 7, not more than 14 Directors; District 8, not more than 18 Directors; At-Large, not more than 15 Directors.

(iii) Fiscal Year 1982-83: District 7, 15 Direc-

tors; District 8, 15 Directors; At-Large, not more than 18 Directors.

10. *Nomination.* At the first Board meeting of the calendar year, the Chairperson of the Board and the President shall appoint a nominating committee for Directors with the approval of the Board of Directors. Such Committee shall contain one member from each district. Such committee shall select one nominee for each Director to be elected. The nominations shall be completed before May 1, to provide sufficient time for preparation of the ballot and completion of details of the election.

11. *Election.* The Directors shall be elected by mail ballot. A special Elections Committee shall be appointed by the President with the approval of the Board of Directors. A ballot shall be prepared containing the names of the candidates arranged in numerical order, by district for District Directors, and in alphabetical order for Directors-at-Large. Terms of office, date and hour of closing of election, and other pertinent data shall be on the ballot. The ballots shall be mailed to each eligible voting member, in good standing, of the Michigan State Chamber of Commerce. Provisions shall be made on the ballot for any member to write in a name for any vacancy in his district. No less than ten days shall elapse between the mailing of the ballots and the closing of the election. The election shall be completed and closed no later than thirty days prior to the end of the fiscal year.

12. *Meetings.* The Board of Directors shall meet not less than four times a year. Meetings of the Board may be held at any time on call by the Board Chairperson, the President, or by written request made by seven Directors and submitted to the President and Chairperson of the Board.

13. *Vacancies.* Should a vacancy occur on the Board of Directors because of resignation or other cause, the Board may fill the vacancy for the remainder of the term, but the Director so elected shall possess the same qualifications as required for the Director whose unexpired term is being filled; provided, however, that should a vacancy exist on the Board of Directors at the time of appointment of the Nominating Committee provided for in Section 10 of these By-laws, such vacancy shall be filled by the regular procedure for nomination and election except that the nominee elected to fill a vacancy shall serve only for the remainder of the term.

14. *Voting.* Each Director shall cast one vote on all questions coming before the Board of Directors and all questions shall be decided by a majority of the votes thus cast. Any question as to procedure at a meeting of the Board which is not provided for in the by-laws shall be determined according to *Robert's Rules of Order, Newly Revised.*

15. *Quorum.* Twenty-five members of the Board of Directors shall constitute a quorum.

16. *Written Consent.* Any action required or permitted to be taken by law, at any meeting of the Board of Directors may be taken without a meeting, without prior notice and without a vote, except as provided herein, if consent thereto is given in writing by members with not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all members entitled to vote thereon were

present and voted. Prompt notice thereof shall be given to all members not giving written consent.

EXECUTIVE COMMITTEE

17. The Executive Committee shall be composed of the Chairperson, eight Vice Chairpersons, the President and the immediate Past Chairperson. The Executive Committee may exercise the powers of the Board of Directors while the Board is not in session, except that the Executive Committee shall not have power to elect Officers of the Chamber or to amend the by-laws. Six members of the Committee shall constitute a quorum. A majority vote shall determine any proposal except that if only six members are present the affirmative vote of four members of the Committee shall be required to determine any proposal.

Any meeting of the Executive Committee may be conducted in whole or in part by conference telephone call, and consent may be given to any action by written statement, telegram, or instructions by telephone.

OFFICERS

18. *Officers Defined.* The elected officers of the Chamber shall be a Chairperson of the Board, eight Vice Chairpersons, one from each district, and a Treasurer. The Board of Directors may appoint the Chief Executive Officer who shall be a Director of the Chamber and shall have the title of President. The President may appoint a Corporate Secretary who may be a paid staff member. The Board of Directors may create such other offices as it may deem advisable.

19. *Nominations.* Nominations for Chairperson of the Board, for eight Vice Chairpersons and for Treasurer shall be made by a Nominating Committee for officers appointed by the Chairperson of the Board and President with the approval of the Board of Directors. Any Director may nominate any eligible person for any such offices at the Board meeting at which the election occurs. Those nominated may be selected from the Board of Directors or from persons eligible for election as Directors.

20. *Election.* The Chairperson of the Board, the eight Vice Chairpersons and the Treasurer shall be elected by the Board of Directors at the first meeting after closing of election of Directors. The Chief Executive Officer shall be appointed by the Board of Directors under such duties, tenure and compensation as may be decided by the Board.

21. *Compensation.* Elected officers of the Chamber, other than the President, shall serve without compensation.

22. *Term of Office.* The term of the Chairperson of the Board, the eight Vice Chairpersons, and the Treasurer shall be for one year, or until a successor is qualified. The Chairperson of the Board shall not succeed himself/herself in office more than once. The Treasurer may be elected to successive terms of office as determined by the Board. Vice Chairpersons may be elected to successive terms of office provided such election does not violate the term limitation imposed by by-law #9 (e).

23. *Vacancies.* In the event of the temporary absence or temporary disability to perform the duties of his office on the part of the Chairperson of the Board, a Vice Chairperson or the Treasurer, the Board of Directors

shall designate someone to perform the duties of such office during the period of such absence or disability. In the event of the death, resignation or permanent disability of the Chairperson of the Board, a Vice Chairperson or the Treasurer, the Board of Directors shall elect a Chairperson of the Board, a Vice Chairperson or Treasurer for the remainder of the unexpired term.

In the event of the temporary absence or the temporary disability to perform the duties of his or her office on the part of the President, the Board of Directors or Executive Committee shall designate some person or persons to perform the duties of President during the period of such absence or disability. In the event of the death, resignation or permanent disability of the President, the Board of Directors or Executive Committee may designate an acting President until such time as a new President is appointed by the Board of Directors pursuant to Section 20.

DUTIES OF OFFICERS

24. *Chairperson of the Board.* The Chairperson of the Board shall be the chief elected officer of the Chamber, shall be the Chairperson of the Executive Committee, shall preside at all meetings of the members and the Board of Directors and with the approval of the Board of Directors, or Executive Committee, shall appoint and discharge committees and require reports in writing, when necessary, to the Board of Directors.

25. *Vice Chairpersons.* The Vice Chairpersons of the Chamber shall be members of the Board of Directors and the Executive Committee. They shall represent their respective districts on the Board of Directors and

in the event of the absence or disability of the Chairperson of the Board one of their number will be chosen by the Board of Directors to act in the place of the Chairperson of the Board. In event of the temporary absence of the Chairperson of the Board, a Vice Chairperson will be chosen at the meeting of the Board of Directors, Executive Committee or any other meeting, to act as Chairperson of the meeting.

26. *Treasurer.* The Treasurer shall perform the duties usually pertaining to his office and shall be a Director.

27. *Chief Executive Officer.* Subject to the general policies of the Board, the President shall be the Chief Executive Officer of the Chamber, perform all executive duties, including the employment and supervision of the salaried staff of the Chamber, attend or be represented at meetings of the Chamber and of the Board and shall, as far as possible, attend and be represented at meetings of the committees of the Chamber, supervise all publications of the Chamber, cause a proper system of accounts to be kept of all monies received or disbursed by the Chamber, make an accounting thereof to the Board at each meeting, and perform such other duties as shall be assigned to him by the Board or the Executive Committee. The President shall give such bond as may be required by the Board of Directors.

POLICY

28. All questions of general policy shall be submitted to the Board of Directors or Executive Committee for consideration. The Board of Directors or Executive Committee may decide the policy or it may order the question or questions submitted to the membership at large for a referendum vote, together with a statement of the

arguments both for and against the proposition and a statement of the recommendations of the committee regarding it. It shall be mandatory upon the Board of Directors or Executive Committee to submit a question or questions to the membership at large for a referendum vote upon an application or petition signed by 10% of the members in good standing of the Michigan State Chamber of Commerce. A referendum vote will be taken by mail and fifteen banking days shall be allowed from the time the ballots are mailed to the membership for the return of said ballots and the closing of the referendum vote. When the said question or questions are submitted to referendum vote, it shall require the approval of a majority of the total votes cast. If the total number of ballots cast is less than 33-1/3 percent of the total membership in good standing, then the Board of Directors or Executive Committee shall call such matter to be resubmitted with appropriate notice of the necessity for a more representative vote. The proposal so submitted or resubmitted shall be settled by the majority vote in such referendum. Established policies may always be reviewed by the referendum procedure set forth herein.

AMENDMENT

29. These by-laws may be amended by the Board of Directors at any regular or special meeting, provided that any proposal for amendment shall be mailed to each Director at least ten days before the date of the meeting. These by-laws may also be amended by referendum as set forth in paragraph 28 hereof.

30. *Senior Advisory Council.* There shall be a Senior Advisory Council composed of no more than five past Chairpersons of the Board who have most recently served as chief elective officers and have completed their terms on the Board as Immediate Past Chairpersons. The function of the Senior Advisory Council shall be to form a cabinet of advisors to the Board Chairperson and President. The Senior Advisory Council shall meet upon call of the Board Chairperson or President. The members of the Council shall be members of the Board of Directors exofficio, without voting rights.

PLAINTIFF'S EXHIBIT 13

The Grand Rapids Press
Friday, June 7, 1985

93rd District: Bandstra

Grand Rapids voters in the 93rd state House District will have no easy choice on Monday.

Each of the candidates, Richard Bandstra and Robert Kolt, has the potential to be an able state representative. Each is bright, hard working and has a good grasp of state issues. Mr. Kolt generally favors a stronger and more centralized government role than does Mr. Bandstra, but their positions on many major questions in Lansing are similar.

There is, in addition, the community's need for a vigorous Democratic Party. One-party dominance tends to make government cloistered and stagnant; two-party debate and competition keeps new ideas flowing and provides a check on abuse. Mr. Kolt's candidacy has been refreshing in that way. He has campaigned openly and aggressively as a Dem-

ocrat, holding the party's standard boldly. In so doing, he has helped restore the party's visibility in Grand Rapids, given individual Democrats new inspiration and perhaps nudged some of them into running themselves. The area's need for more political balance should prompt the community to look seriously at the Democratic alternative.

But the two candidates must still be assessed on individual merits. And there Mr. Bandstra comes out ahead.

He is both a teacher and an attorney, having worked in each profession and having earned advanced degrees in sociology and law. That background would serve him well in the Legislature, where an understanding of social problems is all too uncommon and where an ability to negotiate and cope with technical legal questions is a day-to-day necessity.

Mr. Bandstra has contributed to the community through neighborhood, church and professional groups in ways that show diligence and a concern for the needy. A particular point in his favor is his volunteer work to set up a mediation service to help people quickly and inexpensively settle disputes outside of court. The candidate is smart and takes a studious approach to tasks. His moderate-to-progressive views fit the attitudes of the 93rd District.

Mr. Kolt, 26, is energetic, articulate and outgoing. Possibly his lack of substantive community experience before this race can be traced to the nature of his job. As a television reporter he had legitimate professional constraints on how actively he could get involved. But that fact does not offset the contrast.

Mr. Bandstra is also youthful, 35, but has achieved considerably more.

The Democratic Party in Kent County needs fresh faces; Mr. Kolt surely is a welcome one. He is the sort of person the party needs, for instance, on the Kent County Board of Commissioners. His presence there or in some other local office would serve both Grand Rapids and Mr. Kolt.

This campaign has been a quiet one, owing perhaps to the community's weariness at having gone to the polls so many times in recent months. But it could have been livelier had Mr. Bandstra not chosen to stay out of debates with his opponent. The strategy of ignoring an underdog opponent is familiar and understandable, but it is still a disservice to voters looking for a chance to compare and assess the candidates.

Mr. Bandstra is a newcomer to politics and concedes that he is learning lessons. The Press endorses him for election, but hopes he won't again flunk a test of fairness.

Plaintiff's Trial Exhibit 14

Michigan Needs Richard Bandstra To Help Us Be Job Competitive Again

The Michigan State Chamber of Commerce, an organization of over 8,000 member companies, associations and local chambers of commerce, is committed to making Michigan more competitive for business investment and job creation. With that goal in mind, we'd like to share some facts with the electors in the 93rd House District before they vote in tomorrow's special election.

To be job competitive, Michigan needs to have fair regulatory policies on business regarding such important issues as workers' compensation and we need to encourage greater efficiency in state government by lowering the state personal income tax.

Currently, workers' compensation costs are 20% higher in Michigan than those in neighboring states. Why? Our eligibility standards are not the same as most other states. Too many people are allowed to qualify for too long a period of a time.

Many Grand Rapids businesses are competing with firms in other states having lower regulatory costs. Unless checked, this disadvantage may continue to cost Michigan jobs . . . jobs that are lost when businesses leave Michigan, expand out of state, or when out-state companies seeking to expand don't locate here in Michigan.

To ensure that Michigan is job competitive, we need legislators at the State Capitol who will show courage and stand up to special interests that advocate greater regulation and taxes.

The Michigan State Chamber of Commerce believes Richard Bandstra has the background and training to do the best job in Lansing for the people of the 93rd House District. We believe he will work to reduce workers' compensation costs and for an early rollback of the personal income tax rate.

The State Chamber is committed to job development in Michigan. We believe Richard Bandstra shares that commitment.

On Monday June 10th, Elect Richard Bandstra State Representative 93rd House District Special Election

MICHIGAN STATE CHAMBER OF COMMERCE

PLAINTIFF'S EXHIBIT 14

Not authorized by the Candidate Committee of Richard Bandstra

Paid for by the Michigan State Chamber of Commerce • Suite 400 200 N. Washington Square • Lansing, Michigan 48933

INDEX REGARDING TRIAL WITNESSES

Name of Witness	Trial Record Reference	Appendix Page Reference
Barrett, E. J.	Vol. II, p 388	120a
Buell, W.	Vol. II, p 515	170a
Epstein, E. M.	Vol. I, p 22	61a
LaBrant, R. S.	Vol. II, p 471	147a
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Mayberry, H. R.	Vol. I, p 193	94a
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(Witness: Edward M. Epstein)
Epstein - Direct

* * *

[38] corporations, including the plaintiff and its member corporations, the opportunity to actively participate in the public discussion of important issues and debate during the election process. Have you an opinion as to the truth or falsity of that statement?

A I do.

Q What is your opinion?

A I believe that the plaintiff and other Michigan corporations have been able to be actively involved in the political process, the election process, and have indeed been very much involved in electoral politics in the State of Michigan.

Q What is the basis for your opinion?

A My basis for the opinion is various data that I have reviewed concerning the involvement of Michigan corporations in electoral politics. But, also, that also emanates from materials prepared, published and disseminated by the

Michigan State Chamber by various forms of various illustrations of the involvement by the—by chambers and other business-related groups, including ads placed by such entities, by accounts of involvements of the Michigan corporations that appear in the periodical press, which—well, these are primary sources.

Q Do you have an opinion as to whether the law restrains corporate entities in Michigan in the political process?

A The law constrains in the sense that it does not permit [39] treasury funds to be used for contributions, expenditures, or independent expenditures.

Q As a practical matter, does it have a restraint on corporations?

MR. BOYDEN: Excuse me, your Honor. I think I will object to that question as leading. I think the question essentially was answered in the response to the previous question, in any event.

THE COURT: Well, I will overrule that. He may answer.

A As a practical matter, those entities, those corporations that wish to be involved in the political process can be and are involved in the political process. Indeed, under the very terms of the statute itself, there is nothing that constrains corporations from communicating with their shareholders and with their professional and managerial employees with regard to political activity or views. There is no constraint on the corporations from their involvement in ballot measures, and they indeed have been very much involved in ballot measures, even in terms of independent expenditures. They can get out the vote, they can register, they can

do a variety of activities with regard to their constituencies. And that is direct activities via the political action committee mechanism. Those corporations that seek to can be very actively involved in electoral politics. They are involved here on focusing on [40] electoral politics, not even discussing lobbying it or other forms of political activity or communications to the public as a whole. As a practical matter, those Michigan corporations that wish to be involved in the political process can be and are involved in the political process.

Q Mr. Epstein, do you have an opinion why certain corporations don't form their political action committees in Michigan?

A Well, in terms of formation of political action committees and a very active role in electoral politics, this tends to be an activity of larger firms. It tends to be an activity of firms that are more politically sophisticated. It tends to be an activity of firms that have a very ongoing relationship to governmental entities within the State of Michigan.

So that the importance of having officials in office who are going to be congenial or sympathetic to the public policy needs and objectives of these corporations tends to be larger entities that focus their energies in political activity as an instrumental means of facilitating their business situations.

For smaller companies, particularly for, let's say, small closely held corporations, there is really very little advantage to the establishment of a political action committee because the principals can be involved in a political process in their individual capacities. Also smaller entities very

* * *

[50] Epstein is referring to proposed Exhibit 5.

A Actually I have it, or actually maybe, counsel, it would

be helpful if I had your copy. I seem to have sort of a summary of that. Not the working sheets. These are the actual printouts.

In terms of contributions, okay, the Michigar—I am referring now to my summary table, T-2 —

Q For the record, we are referring to Defendant's proposed Exhibit 3. Please continue.

A Which is captioned "Michigan 1984 PAC Contributions as a Percentage of all Receipts by State House Candidates," candidates for the State House; that we find in terms of the amounts of money emanating from identifiable business sources, including such industries as auto/transportation, banking and finance, chambers of commerce, construction, real estate, general business, utilities, agra business firms, that they contributed so... 1.7 million dollars or some 52 percent of all PAC contributions, and their contributions constituted a third, some 32 percent of the receipts of all House candidates.

If you just look at nonparty PACs, that is, if you exclude PACs established by party committees, then you are talking about they constitute close to 61 percent of all PAC contributions in that 1984 House race.

By way of comparison, unions contributed, union PACs contributed $883,000 or some 17 percent of all House receipts. [51] They constituted some —

THE COURT: Now when was that?

THE WITNESS: 1984, sir, your Honor.

THE COURT: I am sorry. It's 1.7 million?

THE WITNESS: 1.7 for business-related PACs in 1984. It is $883,000 for union-affiliated PACs. At this juncture, almost a 2-to-1 ratio. Interestingly enough, while the bulk of the business-related PAC contributions in '84 were from committees that contributed between 12,000 and $100,000, that is, some 57 percent of all of the business-related PAC contributions came in amounts between 12,000 and 100,000, there was only one business committee had contributions in excess of $100,000.

In the case of labor, 4 committees out of the 91 that filed in 1984 as having made contributions in the '84 House races for committees accounted for some 71 percent of all of labor's contributions. That is, in essence, labor committees are, by and large, those who are active or those which are active players, are in the process, are pretty much at a level of mature capacity, and I would opine that their growth potential is substantially less than exists in the case of the business-related entities which are new and growing in terms of their PAC-related activities.

Q Mr. Epstein, you have described, in part, Defendants' proposed Exhibit No. 3. Could you briefly describe what it is [52] for the record.

A Yes. The proposed Exhibit No. 3 consists of analyses of the various of the following sources of—the following sources of data: It consists of contributions—it consists of—let me put my hands on it here. It consists of analyses of various sources of data from the state.

I mentioned already the study brought in 1984 by Senator Engler's office. It consists of the computer printouts emanating from the Michigan Secretary of State's office. That includes the receipts and expenditures for various categories of political action committees for the election cycles ending in 1978, 1980, 1982, 1984.

I have also—I have also introduced some comparisons of sources of funds in what is labeled here as "T-Tix (sic)"—excuse me—T-6, Michigan-California comparisons of business contributions.

I have also introduced data from the California Political Action Committee's reports on 1984 general elections to give, once again, just some comparative perspective here. And these are the primary sources of data from which this—these statistics and this analysis results.

Q Is there ~~any in~~formation contained in this exhibit that you have not had an opportunity to discuss today?

A Let me look through it and see if I have brought out the salient points —

[53] MR. BOYDEN: Excuse me. I have got to object to the form of that question. That is about as open-ended as anyone could imagine. I don't understand the thrust of it other than it is inviting the witness on some sort of open comment. I would object on what purpose.

MR. GARTNER: The purpose is the foundation so we can get the exhibit admitted after he explains what it is and what it purports to show.

MR. BOYDEN: Well, he has explained what it is and what it purports to show. The question was, was there something else in it that he wanted to talk about, and I think that is objectionable.

THE WITNESS: Well, okay. There —

THE COURT: Wait, hold on just a minute.

THE WITNESS: Oh, excuse me, your Honor.

THE COURT: Well, I don't see any objection to that. It is certainly not leading. He asked him to look at it to see whether or not there is any—he is not calling anything specifically to his attention. He just asked him if there is anything further in the exhibit that he thinks might be important. I see no objection. That is overruled. All right.

THE WITNESS: Okay. Thank you, your Honor.

A We also show, and this is particularly important to the plaintiff in the suit, the Michigan Chamber. Here I am referring to T-8, labeled T-8 with regard to—it is entitled [54] "Chamber of Commerce versus Labor PACs," and what that shows is expenditures emanating from Chamber-related PACs and comparing that with expenditures emanating from its labor and Chamber of Commerce related PACs. And what we are showing is basically a decline, an expenditure that emanates from labor PACs of from 1978 in the amount of $3,242,000 to $2,080,000 in 1984, as well as pretty much a stable situation in terms of the number of union PACs that there are. There has been a fluctuation in '78 of 102 PACs; in '80, 191; in '82 of 150, and '84 of 160. So I think it is fair to say that the number of union-related PACs caps out at somewheres around less than 200.

In terms of chamber PACs, reduced growth in the number of chamber PACs that reported as so making expenditures as well as the amounts of these expenditures from 41,000 in 1978 to 50,000 in 1980 to 114,000 in 1982 to 134,000 in 1984. It seems to me that that is something that is worthwhile noting on the part of the Court.

In terms of the amounts of money raised, amount of money expended by the various categories of PACs, we did discuss that previously, an upswing in the business trajectory, a downswing in the labor trajectory. I would argue that what we do see is an effective capacity on the part of those

business groups that wish to be very much involved in the electoral political process, and from major industries within this state, they have indeed involved themselves very actively [55] in the electoral political process.

MR. GARTNER: I would move the admission of proposed Exhibit 3.

MR. PERRONE: Your Honor, may we voir dire?

THE COURT: Yes.

Mr. Gartner, do you have copies of the exhibits for the Court?

MR. GARTNER: Yes.

THE COURT: It might be helpful if you would make those available to me. It is very difficult to question a witness about exhibits he is looking at, some exhibit, then some objection is raised about it, and I don't have it in front of me. You know, it makes it very difficult for the Court.

THE WITNESS: Excuse me, your Honor, I thought you actually did have it.

THE COURT: Well, that is not your responsibility. That is counsel's responsibility.

THE WITNESS: I guess it is the reaction of a former practicing attorney.

MR. GARTNER: I apologize, your Honor. I will gather all of them. This is the chart —

THE COURT: Maybe at lunch time you just pull them all together.

MR. GARTNER: Would you like the chart?

THE COURT: Is that what he is referring to?

Epstein—Voir Dire

[56] MR. GARTNER: Yes.

THE COURT: All right. Thank you.

Mr. Perrone.

MR. PERRONE: Thank you, your Honor.

VOIR DIRE EXAMINATION OF EDWIN M. EPSTEIN

BY MR. PERRONE:

Q Mr. Epstein, proposed Exhibit 3 is eight pages consisting of eight tables. Now you've indicated on the bottom of the page various source materials for the information.

A Yes.

Q I notice that you've used the Michigan Department of State Campaign Expenditure Analysis-CF/0030; is that right?

A Yes, sir.

Q These tables include figures that came from that source document?

A That's correct, sir.

Q Does that source document, to your knowledge, only include reported expenditures of political and independent committees?

A Yes, sir.

Q Political action committees?

A Yes.

Q Does it include unreported expenditures in election activities?

A I think by definition the answer is no.

Q That would be referred to as "soft dollars"?

* * *

[63] and incomplete fashion the history of the exercise of First Amendment rights by political action committees with restricted funds. We are not here discussing political action committees; and their experience, whatever it is, is irrelevant whether a corporation should be allowed to speak, and I submit it is irrelevant to this case.

THE COURT: Well, I will concede that it does not speak to this matter of independent expenditures. However, they're—it seems to me that the defendants here have raised sort of a broader issue here that really in fact corporations are participating in a larger scale than one might think, despite the statute, and that conceivably could go to whether or not the First Amendment rights are in fact being infringed; and we may get to an issue somewheres along the line that, yes, they are being infringed, but to what extent. An impermissible amount or not, I just don't know. I don't think anybody has attacked the validity of at least the figures or the accuracy what is here.

I think the Court will—I think there may be some relevance, and I will simply wait to hear from counsel later on as to the specific relevance. It seems to me there is some relevance.

That being the case, the Court will go ahead and receive Exhibit 3 and wait to hear from counsel as to what weight ought to be given to this document, really, if any, as [64] we get down really later on in the case. So, I will go ahead and receive it.

Epstein—Direct

(Defendant's Exhibit 3 was offered and received.)

MR. GARTNER: Thank you, your Honor.

Mr. Boyden made the opening statement today on behalf of the plaintiff. Now Mr. Perrone has voir dired our expert witness. My question is, how many lawyers are going to be examining Mr. Epstein today?

MR. BOYDEN: Your Honor, Mr. Perrone handled the voir dire. Mr. Perrone will handle other aspects of the case. I will be cross-examining Mr. Epstein.

THE COURT: Well, I don't see any objection to one lawyer making an objection, as has been done here. I think the only prohibition of more than one lawyer is if one lawyer does the first part of the cross-examination, and then he gets exhausted and he asks his co-counsel to get up and continue. I think generally that is an unfair advantage. So if the lawyers will stick to one particular witness, they can switch on the witnesses, if they want to. I don't see any problem. I think they're handling that perfectly properly.

MR. GARTNER: Thank you.

CONTINUED DIRECT EXAMINATION OF
EDWIN M. EPSTEIN

BY MR. GARTNER:

Q Mr. Epstein, do you have an opinion regarding the purpose of the statute in issue in this case?

[65] A Yes. This Michigan statute, which really has its antecedence in with the 1913 statute, is an effort on the part of the state to limit the potential of monies emanating from corporations to support, subvert, I should say corrupt, to undermine the integrity of an electoral process. It is one of a number of such statutes that were passed by states around that time following an illustration at the federal level, the Tillman Act of 1907, and it is the integrity of the process point that has been stressed both by the legislature at the time of the enactments in '75 and '76 as well as the understanding of the Supreme Court of this state, both in terms of the original statute, and more recently in terms of an advisory opinion concerning legislative purpose of this statute. This has been articulated again and again and again, the integrity of the electoral process.

THE COURT: Why can't they undermine the integrity of the process through a PAC?

THE WITNESS: Your Honor, that is a great concern to observers of what is taking place at the federal level today. In fact, within the Congress at this time there are a number of proposals, proposed legislation to limit the amount of funds that can—that any single PAC can contribute to the electoral, to a party, to a candidate, as well as proposals to limit the amount of monies that a candidate can accept from PAC sources. This is a great concern in terms of public policy [66] today, your Honor. I know in my own

state there have been very express, explicit proposals to place limitations on the amount of contributions and expenditures that PACs can make, for the reason that you have suggested.

BY MR. GARTNER:

Q Mr. Epstein, have PACs in Michigan corrupted the electoral process?

A PACs in Michigan corrupted the electoral process—from my investigation, the answer is no, I don't see that they have. I have not been exposed to any evidence of their corrupting effect thusfar in what we have seen of active political participants.

Q In terms of political effect, what is the distinction between an independent expenditure and a contribution?

A I think as a practical matter, there is very little difference between an independent expenditure and a contribution. An independent expenditure in the hands made by politically sophisticated individuals or persons, I should say, can benefit a candidate just as well as a direct contribution. Indeed, we have seen at the federal level increasing utilization of the independent expenditure mechanism, particularly on behalf of presidential candidates. In terms of the concern of the legislation, that is the corruption of the process, the maintenance of the integrity of the process, any candidate knows basically who was—who were the parties or [67] who were the principals involved in an independent expenditure committee. And if you want to talk about a possible dependency relationship or symbiosis between those who put money into the process and those who benefit, that is the candidate from running the process, the effect is really the same. Skillfully done, an independent expenditure really doesn't differ from a contribution.

Q What is the PAC —

THE COURT: Let me see if I understand what you are talking about. If a candidate running for office is very careful not to have any direct relationship with this committee but he observes or hears indirectly or whatever that this committee is going to finance his television spots, presumably a major expense for him, you are saying that that would tend to corrupt just as much as sending a check to the candidate and saying, "Here is our contribution. Use it as you wish"?

THE WITNESS: That's right. A candidate knows who sponsors those spots. He has benefited from those spots. At such time as—at such time as perhaps the access to office, he is needed or hopefully a sympathetic ear with regard to a piece of legislation or something of that nature, it really makes little difference whether it was a direct contribution or independent expenditure. The relationship is there. As a practical matter, those entities that have been most involved in independent expenditures, at least our federal experience [68] has shown us, have—they may have totally been within the provisions of the law of not coordinating and not being controlled, just to use the language in the federal legislation, by the candidate or by candidates' committees. But typically there have been very, very close relationships, very often personnel who at one time worked for the candidate or worked for the party is now running an independent expenditure committee. You don't have to break the law for an independent expenditure committee to essentially be able to coordinate its activities with a candidate and to know the timing and the types of ads and the areas in which ads or spots or leaflets or whatever to be disseminated.

So what I'm suggesting as a practical matter, the distinction really breaks down, with all due deference to the Court and the Supreme Court in Buckley, in operating politics, well-done independent expenditures can benefit just as well, perhaps even better, than a direct contribution.

BY MR. GARTNER:

Q What is the dependency relationship that you referred to?

A Well, under our system of campaign financing in this country, that basically we are in a situation where campaigns run very, very expensive. We have limited amounts that individuals and political parties can put into the process, yet at the same time to run effective campaigns—and this is true in the State of Michigan, a fairly large state—candidates [69] have to have monies to do this, and sources of money are a very likely—a very viable source of monies are various social interests dependent upon public official decisions made by elected officials. The officials perforce have to look to the social interests, interest groups for sources of monies. The interest groups have what are candidates perforce for public policy decisions, and what develops is a symbiosis. As I say, it is structured into our system and becomes particularly difficult in these cases where you have office holders who have to run with very great frequency. In some respects they're always running. As soon as they're elected, they're still raising money for the next campaign. In fact, in my own state that has been a very difficult source of problem, off-year fund raising. Candidates will often say to you they don't wish they had to do this. They wish they could be totally uninvolved with the raising of money and having to look to the very people who come before them for decisions, but under our system, this is the way it operates. By saying this, I'm not suggesting that's direct bribery or anything of

this nature. It is a much more subtle, it is a much more systemic type of symbiosis, you know, it is some crude form of black bags, things of that nature. "Black bags" is sort of the caricature that we use of the lobbyists giving money to legislators.

Q Do you have an opinion regarding the justification or rationale for prohibiting independent expenditures?

[70] A The rationale is to essentially prevent the loophole or to close a loophole that would exist if we only said that direct contributions and expenditures were prohibited on the part of corporate entities; that basically if you permitted the independent expenditures, the ability of introducing large amounts of money into the system could become as effectively by that vehicle as it could by the direct and prohibited contributions and expenditures. That is the public policy purpose. Indeed, this is the public policy concern with regard to the implications of independent expenditures. As we have seen in the ballot measures, business, and along with other interest groups, business has been very effective in using the independent expenditure mechanism to get money into the process.

Q Do you have an opinion regarding the rationale or justification for treating corporations and noncorporate entities differently under the Michigan statute?

A I guess it is an historical rationale that—what we have seen over the—what we have seen over the years, that it's been business organizations as a result of their organizational structure, as a result of their access to substantial sums of money that are able to generate funds to contribute or expend into the political process; and this is the concern to which the legislation is addressed.

Q How is that rationale relevant today?

* * *

[76] MR. GARTNER: I can put them in order.

THE COURT: That is what Steve is there for. I think he could find it a lot faster than I could.

All right, Mr. Gartner.

CONTINUED DIRECT EXAMINATION OF
EDWIN M. EPSTEIN

BY MR. GARTNER:

Q Continuing with your testimony, Professor, do you have an opinion regarding the distinction regarding independent expenditures when they emanate from individuals and when they emanate from corporations, is there is a distinction; and if there is, please give your opinion.

A Well, independent expenditures, if they did emanate from corporations, of course have behind them the full source of corporate resources, the corporate treasury, the corporate organizational mechanism, the ability of the corporation to marshal all of these resources.

Also independent expenditures on the part of a corporation are directly instrumental to the business of objectives of the corporation. They are not typically made just in the interest of civic virtue or the public welfare. I mean, they have a very instrumental objective in mind; that is, facilitating the business objectives of the firm. So it is both in terms of what they can bring to bear; also the purposes which they—which they have in mind, and also they bring behind it the weight and the strength and the reputation of the [77] corporation, too, which is an additional aspect or an additional dimension one doesn't find if it is the usual run-of-the-mill individual.

Q If the ban on independent expenditures is lifted, do you have an opinion with regard to the effect on the political process in Michigan?

A I suspect what you are going to find is more active use of independent expenditures on the part of Michigan business corporations. I am not sure that this would come immediately. From experience, both nationally and in, let's say, my own State of California, is that at such point as companies feel that they have used the PAC mechanism to the fullest extent that they want to in terms of direct contributions, it is at that juncture that they are more likely to use independent expenditures.

I think where you would see an increase of independent expenditures is not individual companies, but, rather, trade associations and general business groups, such as the Chamber and/or such as the Michigan Manufacturers Association, because very often companies which are very concerned about the incumbency factor wanting to maintain reasonable access and good relations with whoever happens to be sitting in the Assembly or the Senate or the U.S. Congress, irrespective of the party, will go with incumbents. However, they're more ideologically based or they're proclivities will [78] often be generated or often be expressed through either industry-wide or general business types of committees where basically their own individual component may be lost, but they're able to get the monies to benefit those candidates who they particularly want. We have most certainly seen it in California where you have companies that have contributed directly to Candidate A. We have very strong contributors to what is known as United For California, which is a general business PAC but has very strong ideological directions on how it gives it monies.

So I think what you are likely to see is the independent

expenditures coming from groups, such as the Chamber or general business groups rather than from individual General Motors or Dow Chemical or whatever.

Q Is that of concern to you?

A Well, yes, it is of concern, because you may get a level of independent expenditures operating here that really are much more significant than other social interests can bring to bear, and we'll have the same situation that we see in the ballot issue races where when stimulated or energized or when it is perceived that there is a very immediate economic interest involved, I think the business community has shown itself very capable of generating very substantial amounts of money and getting it through the process.

Q What has been the effect of the State Chamber and its [79] activities in the political process in Michigan?

A Well, perhaps the best source I have for that is the State Chamber itself, and the State Chamber opines in a publication called "The State and Local Chambers of Michigan Working Together in Political Action." That's the Chamber PAC network, "We've made a difference." And the document details such things as the development of some 50 local chambers throughout the state and its activities in generating monies on behalf of particular candidates. Let me be rather specific here by referring to this particular document. They talk about how it took awhile to get started in establishing the Chamber PACs, but now what they have done is developed the state law PAC network. Here are specific illustrations that they bring to bear. They bring to bear their impact on a number of different elections. And I am referring to pages 4 and 5 and 6 in our approach specifically from here. They talk about the election of a race involving Mr. Wilson and Mr. Banich, and in that election they note that the UAW remained the largest

political contributor. However, a new group emerged that is the largest second contributor, the Chamber PAC in addition to the State Chamber's PAC, varied among local chamber PACs making contributions to Wilson, making chamber PACs his largest supporter; and they say chamber PACs as far away as Iron Mountain, and please excuse my pronunciation—"Meneminee"?

Q "Menominee," I believe.

[80] A Well, not too bad.—in the Upper Peninsula, and Boyne City and South Haven in the Lower Peninsula, participated in this targeted race. Combined chamber PACs of over eighty-two twenty-five showed that chamber PACs had themselves emerged as a statewide force.

Chamber PAC involvement was not just restricted to democratic party primaries in '82. In November of '82 the chamber PAC network helped Republicans achieve a net gain of four seats in the State Senate, an additional seat in the State House, and these came not withstanding Democratic landslides at the top of the ticket.

They also speak specifically about the special senate elections in the Eighth and Ninth Districts in 1984 and the—they notice that through the chamber's efforts basically the majority shifted from the—I guess there was a recall of two Democratic senators and a special election in which two Republicans were elected. The State Chamber PAC—I am quoting from page 5 of this Chamber document—contributed the legal maximum to Republicans Rudy Nichols and Kirby Holmes, two pro-business candidates. Thirty-seven other local chamber PACs joined the State Chamber PAC in making contributions to Nichols and Holmes. Over 32,600 was contributed by the Chamber PAC network—

MR. BOYDEN: Your Honor, excuse me. I think this could go on in some length. The question was, "What can you [81] tell us about the effectiveness of the chamber PAC?" I would stipulate that the chamber PAC has been effective. I don't think it is necessary to have this witness read a whole bunch of documents from the chamber PAC itself. We can put the whole document in. So as far as I'm concerned, I would object to the answer being far afield from the question at this point.

THE COURT: Well, I think that it's—it seems to me it is relevant in response to the question. I guess Mr. Gartner can try the case any way he wants to, and if he wants the witness to put in the record material from chamber publication, I guess he's free to do so.

You may continue.

MR. GARTNER: Thank you.

A Well, I see that his Honor has the document in front of him, and I would think that any reasonable review of the pages that I have mentioned here, the document very, very thoroughly, in the chamber's own words, that it has been an exceedingly effective mechanism in generating political support for candidates responsive and congenial to its point of view. And of six GOP challengers to House Democratic Liberals, one received over 21,500. Five of these six challengers won election. And it just goes on and on and on this way, and it concludes as follows: it says, (reading) Chambers of Commerce have come a long way politically in less than four years of time —

[82] THE COURT: Excuse me. What page are you on?

THE WITNESS: Page 6, your Honor, the bottom of the—

THE COURT: Yes, I see it.

A (reading) Chambers have become a tool for the improved business climate in Michigan. We have made a difference. We can continue to make a difference.

Of course this document includes various mechanisms that are used to facilitate local chambers of commerce in terms of everything from telephone information to suggested solicitation forms to the introductory pitch to—delineating the amounts of money that various chambers have put into particular races and, in essence, indicating how it could be helpful and effective to its local constituents in the political process.

It is interesting to note with regard to the Eighth and Ninth congressional seats from this '84 special election, really if you want to talk about network giving, you can see we have looked at only the State Chamber, the top five local chambers of commerce for that election. These are drawn from records filed by each of these entities with the Secretary of State's office, but, indeed, there has been a very coordinated type of contribution effort here. And I get, depending upon your preference, your Honor, I could read the contributions made by various chambers in that State Chamber, and the State Chamber in the Eighth and Ninth races in '84 to establish this [83] or present here as evidence.

Q Just summarize.

A All right. We find with regard to the Eighth and Ninth Congressional, Eighth and Ninth Senate seats, that we have maximum contributions of $4,500 on behalf of Messrs. Nichols and Holmes by the State Chamber.

We find that the Kalamazoo County Chamber gave Mr. Nichols $450. Central Macomb, $200. We find that Mr.

Holmes received from Kalamazoo 450, Central Macomb 400. We find that with regard to the Greater Detroit Chamber, contribution of a thousand dollars on behalf of Mr. Nichols. Grand Rapids Chamber, $4,500. Oakland County Chamber, $1,500.

On behalf of Mr. Holmes, Grand Rapids, $4,500. Oakland County, $1,300. The point is you have chambers across the country—not across the country. Excuse me—across the state making their contributions to this particular targeted race, which is viewed as points by the chamber.

MR. BOYDEN: Your Honor, again, at the risk of interrupting, I think the record ought to be clear. Although the witness keeps talking about chambers, these are chamber PACs.

THE COURT: Yes, I certainly understand that. I assume the witness does also.

THE WITNESS: I understand that. But in looking at the materials submitted by the chamber, the separation of the [84] two in terms of its constituency and the separation of the two in terms of being viewed as mechanisms of or instrumentalities of the business community—

MR. BOYDEN: Your Honor—excuse me, Mr. Epstein. Is there a question before the witness that has allowed him to go forward into this particular data? I didn't hear one.

MR. GARTNER: I believe he was continuing with his answer to the question I asked.

THE COURT: I think if—it is not the most easy and

comfortable way to communicate, with questions and answers. Lots of people obviously that aren't communicating in that form find it a little awkward. But, nevertheless, that is the tradition you follow in the court. So if you will listen carefully to see if there is a question pending, and then try the best to answer it.

All right, Mr. Gartner.

THE WITNESS: May I say, your Honor, I thought I was responding to the distinction between the chamber and the PACs in attempting to show in the chamber's own materials, they merged together these—

MR. BOYDEN: Your Honor, excuse me. Again, whatever it was that Mr. Epstein was attempting to do, it was not in response to any question, but, rather, in what he took to be a response to my objection. That is what I objected to, that is what I thought the Court had just instructed him about.

* * *

Epstein - Cross

[92] right of free speech or advocacy on the same terms as business corporations; is that true?

A Under Michigan law, they do not have to create PACs.

Q That is a difference in treatment, is it not? We can certainly agree with that. Is that true?

A Yes, it is.

Q It is a restriction, at the very least, of what, when and how a corporation can exercise a right that the Constitution says is guaranteed; is that true, sir?

A Well, it is a constraint.

THE COURT: It is a what?

THE WITNESS: A constraint.

BY MR. BOYDEN:

Q Is it also a restriction?

A It's a restriction.

Q Thank you. Are you aware, sir, that labor unions are normally felt to be politically aligned on a partisan basis with the Democratic party, and particularly so in Michigan?

A Yes, I understand that.

Q Are you aware, sir, on the other hand—

A Let me go to your question of the Michigan situation.

Q Okay. On the other hand, particularly again in Michigan, business and corporate interests are generally thought to be aligned with Republican party politics; are you aware of that?

A I am aware of that.

* * *

[117] yourself to answering my question.

A My apologies.

Q I have gone ahead and let you go well past the yes or no's I've requested, but I would like to at least have the question answered.

A Thank you. My apologies.

Q Okay. You would agree, would you not, Mr. Epstein, that corporations and business in general have a vital role to play in American politics within our pluralistic industrial society?

A I would.

Q You would agree that the societal role has at least two parts: one, of course, is the self-interest part, to promote the interest of the corporation and its shareholder; and then to preserve the public's interest in receiving the business viewpoint, and then having business interact in public policy formulation, would you?

A I sure would.

Q That is especially true in economic issues?

A Yes, sure.

Q That is the area, after all, in which business and corporations operate, the economic area?

A Well, they would operate in the economic area, but they have great sound political and social ramifications also through their activities.

Q Would you agree, Mr. Epstein, that the evidence from other [118] states in the federal experience do not show independent expenditures to have a corrupting impact in terms of creating a dependency relationship between businesses and legislators?

A There is very little evidence about independent expenditures.

Q Whatever that is, it doesn't show any corrupting influence, does it?

A To date, no.

Q Thank you. You are concerned, I am sure, as a political scientist who has training in the law and knows about constitutional laws and I am sure treasures your rights and freedoms, you would agree in a democratic society there must be a close look at any limitations placed upon political activities; is that true?

A That is true, sir.

Q Do you recall the criterion that you posed in your book "The Corporation in American Politics" back in the late '60s?

A I don't quote it to you verbatim, but I gave, I think, a reasonable paragraph of it a few minutes ago, yes.

Q Let me quote it from your book for both our benefit. "Should be judged by the following criterion," you said: (reading) such limitation, quote, does the nature and the quality of political participation by any given social interests, whether individual or collective, or combination of interests, threaten unduly to deny on a continuing basis to

* * *

[127] committees with some suspicion?

A That is correct.

Q Okay. Would you agree with me, Mr. Epstein, that as much disparity as there is and the kinds and types and natures of corporations, that if one accepts your statements that PACs or their alter egos, there are basically just as many differences and distinctions between corporate PACs as there are between corporations?

A In terms of the types of entities with which they're associated?

Q Yes.

A Yes.

Q Okay. And you have agreed that indeed the conception of corporations is not monolithic, but, instead, is richly varied; is that true?

A That's correct.

Q Indeed, in one of your works you wrote that the term "corporation" is a broad conceptual category encompassing highly diverse entities with widely differing societal roles; is that true?

A That's correct.

Q Okay.

A Just like with labor unions.

Q Labor unions, though, you would agree with me, would you not, have a tendency to be considerably more towards monolithic

* * *

Epstein - Redirect

[144] of money." You were asked whether you agreed or disagreed with this statement, and you indicated you did not agree with it. Would you please explain your answer?

A Well, it goes to the point we were discussing in the morning, that independent expenditures skillfully used by political professions that can time them well, that can place them well, that can have them—have the ads in the media at the time that is most useful for a candidate's campaign—the candidate doesn't have to tell them. If anyone has been running political campaigns for 20 years, they know when it is good to place an ad. It is better to place an ad a week

before an election or a month or two months before an election. If skillfully used, they can have exactly the same impact as a contribution. And we have seen in a number of races across the country where that has been done.

Independent expenditures played, for example, an important role in the Helms-Hunt debate election, the last election cycle. These independent expenditures committees were made up of very skilled professionals who knew where to place the ads, when to place them, what the impact of these ads was going to be. And in terms of their relationship with the Senator, it doesn't make any difference whether it was an independent expenditure or a contribution. It's—it has really the same effect.

Q On page 160 of the California Gold Rush, it reads that [145] (reading) Independent expenditure committees may not be truly, quote, independent, close quote. Elizabeth Drew has concluded, quote, there are all manner of ways in which people running independent campaigns can run them in tandem with the candidates, and there are all manner of ways in which without the candidate or his top aides necessarily getting involved, the independent committees and the campaigns can and do collude. (end of reading) Do you agree with that statement, and what are your reasons?

A If you have skilled professionals operating an independent expenditure committee, they don't have to break the law to work very effectively together. If—they don't have to break the law to work effectively together, for the reasons I was suggesting. They know what the—they know the amount of money that the candidate may have. They know how the candidate is likely to use that money, because of their own past involvements, breaking very often with that particular candidate, and know where they can best get the bank for the buck in terms of how they use their monies. I

mean for the politically sophisticated, you don't have to break the law to work.

THE COURT: I suppose in a close election skillful people are going to know that the Ninth and the Twelfth precincts are the key to winning an election in Grand Rapids, for example?

[146] THE WITNESS: Yes.

THE COURT: So this independent committee, without going anywhere near the candidate, we don't care what he does or how he spends his money, but we will concentrate our money on those two precincts, regardless of what he does. I take it this is the kind of thing you are talking about?

THE WITNESS: Yes, that is what I am talking about. And the references that they made here in terms of what would be, well, of course some screwball effects of independent expenditures, are for, so, you know, so the law of canons that sometimes gets into the electoral process, not for the political professioals that are running this thing; that somebody falls in love with a candidate or violently opposed to a candidate, and, you know, runs crazy ads, and, you know, essentially hurts the candidate. That can happen. But these don't occur in the hands of really politically sophisticated groups, such as the Chamber, or if the unions are going to use independent expenditures to any great extent, they wouldn't be running like whose canon off here, nor would the Chamber, nor would the—you know, NCPAC is another proposition.

Well, I just wanted to give you the name of some independent expenditure committees, Fund for a Conservative Majority, somebody of that nature. They know what they're doing and they know best how to do it.

BY MR. GARTNER:

* * *

(Witness: Woodward Sidney Smith)
Smith - Direct

[170] particular lawsuit, is it your understanding that we are here in an effort to allow corporations to engage in what have been identified as independent expenditures the same as such societal interests as labor unions may do?

MR. GARTNER: Objection, Your Honor. It is as to the form of question, because, as I discussed, on Friday, the statute does not apply in that manner. The statute applies to corporations and noncorporate entities, and it is erroneous to distinguish between corporations and labor unions, as Mr. Boyden is doing.

THE COURT: Well, why don't you see if you can rephrase the question, Mr. Boyden.

MR. BOYDEN: Surely.

Q Mr. Smith, what do you understand the thrust of what we are asking the Court to do here in this lawsuit is?

A My understanding of the thrust of this lawsuit is that my corporation have the right to speak in political matters and that I be treated as equally as a partnership, as a labor union, or as anything else.

Q In this particular lawsuit, Mr. Smith, we have heard from the expert for the defendant who has indicated, among other things, that corporations are able to speak on behalf of business and therefore business is able to speak on a parity with such societal interests as labor unions, because they can form political action committees or separate segregated

funds [171] in order to make independent expenditures. Why has W. S. Smith Company not formed a PAC to give voice to those things that you have indicated it wants to give voice to?

A Well, to begin with, any PAC that would be performed by the W. S. Smith Company I can see one sole contributor, and that is myself. I don't feel I am in a position to ask my employees or to demand that my employees put money into a W. S. Smith Company PAC. Those are after-tax dollars to me, especially when my corporation has the issue in front of it. I feel there is a great deal of paperwork that has to be done, which is an additional expense to my corporation. There are other controls that I am sure the State would levy on us or already have on PACs, and I am quite familiar with all those controls. So I just feel that—I feel that it is a blockade. I have always felt that way. I think the PAC itself a nice thing, but it certainly doesn't represent me and my issues when it comes to local politics or things that affect directly my company.

Q How do you feel about the public credibility of PACs as opposed to the corporations speaking in their own voice?

A I think there is a credibility problem with PACs. I don't think that the original intent of the PAC was to have that, but I do believe that PACs have been publicized to have that kind of problem, that they basically do have a credibility problem. I think a corporation that has a [172] particular issue does not necessarily represent a credibility problem.

Q One of the points again the defense expert made in this case was that small corporations, such as yourself, W. S. Smith Company, can go ahead and accomplished individually those kinds of things that would otherwise be done by a larger corporation forming a PAC. As a matter of fact, the

W. S. Smith Company does business in a variety of communities across the State of Michigan; is that true?

A That's true.

Q And in those communities, the W. S. Smith Company name is not even known, at least to some extent; is that accurate?

A Yes, I would say that is correct.

Q But the name Sidney Smith, I assume, would not have the same recognition or credibility; is that correct?

A It would not.

Q Okay. With respect to the whole situation of what you understand the Chamber to address and even the Chamber PAC, does it and is it able to address the particular interests of the W. S. Smith Company?

MR. GARTNER: Your Honor, I will have to object to lack of foundation. Mr. Smith hasn't indicated any familiarity with the Chamber PAC.

MR. BOYDEN: I agree. I will rephrase the question.

Q With respect to the Chamber of Commerce itself, laying [173] aside the PAC, Mr. Smith, would you please indicate whether or not the Chamber is able through its activities to represent the particular interests of the W. S. Smith Company?

A To some degree. They certainly represent the interests of my corporation as well as others on the State level. Where I run into a major problem is when I am in, for instance, Marquette or Grand Rapids or Holland or Muskegon or Buchanan and we have a local issue, such as maybe an

increase in millage rates to fund some things that are just absolutely gong to have to be passed on to the renters of my project, I need a view of that, and I can't ask the State Chamber for $100 a year to come down and defend my particular issue. My corporation can't defend it because of this law, so that leaves it to me, and I don't quite feel that is fair.

Q With respect to corporations' inability and particularly the W. S. Smith Company's inability to make independent expenditures with respect to its political views, how do you feel about that being justified under your concept of our political system?

A I am sorry, Joel, could you repeat that?

Q Sure. You understand there is a disability on the part of the W. S. Smith Company to make independent expenditures; is that true?

A That's true.

Q Why is that unfair?

* * *

(Witness: H. Richard Mayberry)

Mayberry - Direct

[236] the federal scheme as to the labor community was subject to the ban on expenditures.

So as of 1947 both corporations and labor organizations were prohibited from making contributions and expenditures in connection with federal elections.

Q What is the present day situation; has it changed from the mid '40s?

A It has not.

Q Okay. Would you please indicate to us what differences there are which would support any kind of a disparity in treatment of corporation interests, business interests, on one hand, and labor union or other similar interests, on the other hand, with respect to the issue of independent expenditures?

A I can think of no characteristics or reasons why the two would be treated differently. There is every reason as a matter of public policy to treat them both the same and to give parity to corporations and labor organizations under the election laws to create a competitive environment and to promote and encourage political activity by both so that we can get a greater flow of information on the issues of the day to the electorate and the citizens who will be called upon to cast an informed and intelligent vote on election day.

THE COURT: Would the financial ability of these corporations or unions make some difference? In other words, if you—I am sure unions get their money out of dues, but I [237] suspect that a union treasury isn't going to look like General Motors' treasury. Is there some reason to think that they should be treated differently if you look at their financial resources?

THE WITNESS: Your Honor, I don't believe so. Both are the foundations of our economic system, and in their ability to participate within the electoral system, in my judgment and as I have read Buckley versus Valeo and the United States Supreme Court judgment, it is not a constitutionality permissible reason in order to distinguish their treatment under the election laws.

THE COURT: Well, you see frequently in the cases reference to the fact that corporations have traditionally in some respects, at least, been treated differently than noncor-

poration entities; that is, corporations are given—they're created by statute, they're given certain benefits, they're given liability, they're given other benefits that are awarded to them. That being the case, is there anything to the argument that since they're given these benefits, in an effort to avoid implication of improper expenditures or of buying elections, the perception of dishonesty, that they can somehow be treated differently?

THE WITNESS: Both corporations and labor organizations are afforded privileges within our society; that is, the ability to have compulsory dues and the ability to [238] sell product and to capture the proceeds in a treasury enmassing economic wealth.

In my judgment, I have great confidence in the American people, for the people in the State of Michigan, that if there is proper disclosure in terms of who is making the expenditure in what amount, that the voter is able to make an informed decision and to read the allegiances of the candidate in terms of who they are receiving money from; or in the case of independent expenditure, since there is no consultation and there is less potential for corruption—and I don't believe independent expenditures have a corrupting influence. In fact, I think it's just the opposite. It is good government because the of the intermeshing robust debate that they cause. The citizen voter is able to make a judgment with full disclosure and, quite frankly, cast a vote for or against the candidate based on who the citizen views their allegiance of the candidate may be to, whether it be the labor community, or business, or Republican or Democratic or nuclear freeze issue or whatever the particular affiliations of the candidate.

So, in other words, if you disclose who makes the expenditure in a timely fashion,; for example, with independent ex-

penditures, you have a notice paid for, in this case, by the Michigan State Chamber of Commerce in terms of the public advertisement, political advertisement that the Michigan State Chamber wanted to run. When that runs the [239] reader is able to clearly see. It is conspicuously stated on the advertisement who made it and to form their own opinion in terms of as the Court is judging my credibility, the citizen can judge the credibility of the person making the independent expenditure.

THE COURT: All right, thank you.

THE WITNESS: I was just thinking that the government in the sunshine, in electoral—electoral activity in the sunshine has a great disinfective effect, because it's in—we are talking about activity highly visible in which people involved with it are fully identified.

So I think, from my observations, that the citizens can make their own mind up on the issues.

BY MR. BOYDEN:

Q Mr. Mayberry, Judge Hillman has raised an issue that I intended to cover a little bit later, but let's talk about it now since I think it is appropos to the line of inquiry of the Court. You were present at both Mr. Epstein's deposition testimony and his testimony here in court, and you heard him indicate that corporations and corporate PACs are essentially fungible, and that PACs can accomplish for the corporations that which the corporations can accomplish. You heard that testimony, is that correct?

A Yes, I did.

Q And that would lead, I think, to the conclusion that

Mr. [240] Epstein also adopted, and that is that the contribution or participation level of corporations through their corporate PACs is about what it would be through any kind of direct corporation activity; true? That is what he basically said?

A Yes.

MR. GARTNER: Objection, Your Honor. I don't recall that testimony by Professor Epstein.

MR. BOYDEN: Well, I guess it is a matter of record one way or the other. That is certainly my indication and recollection of what he said.

THE COURT: Well, perhaps maybe to be on safe ground, "assuming that this is what the record would say."

MR. BOYDEN: I think that is a good point, Your Honor,.

Q Assuming that the record would establish that Mr. Epstein indicates a belief that the participation in election activities by corporations is not affected by the necessity for PACs, if they participate to essentially the same extent under PACs as they would under a direct allowance, Assuming that to be so, have you made some comparisons based upon the federal scheme of things, the federal election law in contributions between the corporate PACs, on the one hand, and the labor PACs, on the other?

A Yes, I have.

Q In fact, if we could direct the Court's attention to tab

* * *

Mayberry-Direct

[274] has to be added to for an aggregate figure to arrive at the 20-million dollar figure.

Taking a look at the starting point, what The Federation, the umbrella group, was spending in 1976 to identify their members so they could communicate for political purposes, they spent 262,000, over $262,000. On registration drives they spent $459,972 —

THE COURT: Excuse me again. Are these figures I will find on these charts?

THE WITNESS: Your Honor, the figure on the chart is $20,000,000, the value, and this is my Table 2-A. In order to test that figure and to come up with the reasonableness of it, I have examined other documents, including the stipulations in the RNC case as well as the Epstein scholarly writings and other scholarly writings, such as Professor Alexander of USC.

BY MR. BOYDEN:

Q Mr. Mayberry, if I may interrupt you, based upon all of those double-checks, you are satisfied that the estimates given on Table 2-A, which came from other sources, are accurate and, if anything, underestimated; is that accurate?

A Absolutely.

Q If you add those soft dollar amounts to the amounts testified to by Mr. Epstein and as reflected in the spending in federal elections illustrated on Tables 1-A and 1-B, what does that do for the total comparative amounts between labor unions, [275] on the one hand, and corporations, on the other?

A Well, what I think you will find here is that when you take the hard dollar expenditures by the corporate community, which are reportable by law, and you compare them with the hard dollar activity of the labor community, which is reportable by law, for example, 26.1 million dollars in hard dollar activity by the labor community —

THE COURT: Hold on just a second. Let me just interrupt.

MR. BOYDEN: Hold on a second.

THE COURT: I am trying to take notes here. I get the question down and I am looking for an answer. The question was, if you take the hard dollars that apparently are already in evidence here —

MR. BOYDEN: In Tables 1-A and 1-B.

THE COURT: — in Tables 1-A and 1-B—

MR. BOYDEN: And add the soft dollars to it.

THE COURT: — and add the soft dollars to it, comparing the labor and corporation, what do we come up with? I guess that is the question.

THE WITNESS: What we come up with, it would appear that there is some type of parity or equity or reasonable ability of these two economic interests to compete based on an evaluation of what their political activity is.

BY MR. BOYDEN:

* * *

[297] A No, I don't.

Q I will share with you my copy.

A Yes.

Q Does T-4, as prepared by Mr. Epstein from the figures of the political action committees in Michigan, indicate a fundamental difference in the subject of the expenditures by corporations, on the one hand, and by labor unions, on the other?

A Yes.

Q What does it indicate?

A The Epstein chart indicates that labor gives almost exclusively to democratic candidates, 98 percent of their expenditures. This is in stark distinction to the business community, which is bipartisan in support of its candidates, giving approximately half to republican candidates and approximately half to democratic candidates.

Q Again the exact expenditures are 52 percent for Republicans of business expenditures, 49 percent for Democrats; is that accurate?

A Yes, it is accurate.

Q Now, Mr. Mayberry, if we accept the hypothesis that was put forward by Mr. Epstein, that the removal of the ban on First Amendment freedoms on corporations would in fact increase the activity of corporations in the form of expenditures, do you have an opinion, if we hypothetically accept that, would [298] that benefit both political parties equally and simply serve to stir more awareness and healthy debate, based on Mr. Epstein's figures and findings?

MR. GARTNER: I am going to object to the form of the question. It is a leading question.

MR. BOYDEN: I asked if he had an opinion.

THE COURT: That is overruled.

Q Do you have an opinion, Mr. Mayberry?

A Yes, I do.

Q What is your opinion?

A Well, based on the Epstein tables, it would appear the expenditures would go to both Republican and Democratic candidates in roughly equal forum.

Q Turning your attention back now to Exhibit 4-B and that portion of the table with the conclusory graph, Mr. Epstein indicated in his testimony that corporate PAC expenitures increased in Michigan at a higher percentage than dollars spent by noncorporate PACs in '82 and '84 election cycles. What can you tell us about that, based upon the State's own proposed exhibit in 4-B?

A I am sorry, could I see that exhibit?

Q Sure. That is the one you referred to before. It is appended to the end of the computer printout, that one.

A It would appear that there is approximately twice as much spending by the noncorporate and labor groups as there are for [299] corporate PACs.

Q What about the rate of increases over the '82 and '84 election cycles for the two components?

A There by the State's figures there appears to be a decrease in coporate PAC spending from 2.8 million to 2.7 million.

Q Okay. And how about for noncoporate interests?

A There appears to be a decrease in noncorporate PAC spending also.

Q In about what amount?

A 4.1 million in 1982 to approximately 4 million in 1984.

Q Okay. So each decreased approximately how much?

A Approximately $100,000.

Q All right. You heard Mr. Epstein testify that all corporations in Michigan have the effective capacity to establish and administer a political action committee in the state. Do you have an opinion with regard to that?

A Yes, I do.

Q What is your opinion?

A I disagree with Mr. Epstein on that point.

Q Why?

A For a number of reasons. First, there is a cost associated with formation, administration of a PAC. The costs are estimated from 25 percent to 50 percent of the amount of money which is spent by a political action committee. [300] Therefore the smaller corporations, the medium-sized corporations, are unequal in terms of their ability to have the resources to form and administer a political action committee.

Second, a number of corporations have chosen not to use the PAC vehicle due to the — there is a quantum of social programs, which is attached to the use of PACs because of the popular —

Q Slow down.

A In other words, the public is critical of political action committees. They have been cast in a negative image by the national press, so a number of corporations have chosen not to use a political action committee device.

Lastly, it is cumbersome and it forces a corporation to create a separate legal entity and another organization to undertake an activity. It is very expensive. So many corporations have chosen not to use a political action committee.

Q Okay. You heard, since you were present in court, Mr. Epstein respond to a question by Judge Hillman to the effect that a political action committee has an equal potential to undermine the political process as any other source of political expenditure; do you agree with that statement?

A Yes.

Q Given that agreement, do you agree then with Mr. Epstein's [301] testimony that with respect to whether an activity is carried out by a corporation or a corporation's political action committee, the net effect, if you assume corruption or appearance of corruption, is going to be about the same?

A Yes.

Q Do you agree with Mr. Epstein's testimony that there is no evidence of corruption or appearance of corruption by political action committees in Michigan?

A Yes.

Q Mr. Epstein has characterized corporations and corporate political action committees as "fungible" or as "alter egos." Do you have an opinion as to the accuracy of that claim?

A Yes.

Q What is your opinion?

A I believe the corporation and a PAC are, looking at them functionally, they are separate and distinct since they have different sources of funding.

Q Therefore are they fungible?

A No.

Q Are you familiar with proposed Exhibit No. 7 in this case, which is a report entitled "Managing Corporate Political Action Committees"?

A Yes.

Q Do you consider that work, as published by "The Conference Board," to be accurate and authoritative?

[302] A Yes.

Q Is it considered to be accurate and authoritative in the field of election law?

A Yes.

THE COURT: Which exhibit is this?

MR. BOYDEN: This is proposed Exhibit 7, your Honor, entitled "Managing Corporate Political Action Committees."

Q Have you in fact referred to it in order to be prepared to testify in this case?

A Yes.

Q What does that study or report have to say as far as comment about the idea or proposition that corporations and corporation political action committees are one and the same?

A That report would indicate — indicated that they are treated differently by the business community.

MR. BOYDEN: Your Honor, at this time I would move for the admission of exhibit, proposed Exhibit No. 7 into evidence.

MR. GARTNER: Could I voir dire Mr. Mayberry for a moment?

THE COURT: Yes, you may.

VOIR DIRE EXAMINATION OF H. RICHARD MAYBERRY, JR.

BY MR. GARTNER:

Q Mr. Mayberry, is proposed Exhibit 7 a document you prepared?

[303] A No.

Q Who prepared this document?

A The Conference Board.

Q And isn't it true The Conference Board is a business information service whose purpose is to assist senior executives and other leaders in business?

A Yes.

Q And isn't it true that members of The Conference Board consist solely of businesses in the country?

A Yes.

Q Isn't it also true that the greatest share of its financial support of The Conference Board comes solely from business concerns?

A I believe so.

Q Do you know the date of this article?

A 1986 is the copyright date.

Q Do you know how the information and the tables that are contained in the article, do you know how these tables, the information contained therein, was obtained?

A Yes.

Q Do you know the author?

A I know of The Conference Board.

Q Do you know Catherine Morrison?

A I do not know her personally.

Q So you have never spoken to her, talked to her?

[304] A I have not spoken to Ms. Morrison.

MR. GARTNER: Your Honor, I don't have any objection to this document being admitted for the purpose it is going to be brought in.

THE COURT: All right. It is received.

MR. BOYDEN: Thank you, your Honor.

(Plaintiff's Exhibit 7 was offered and received.)

CONTINUED DIRECT EXAMINATION OF
H. RICHARD MAYBERRY, JR.

BY MR. BOYDEN:

Q As a result of your experience and your training and your background in the election law field, Mr. Mayberry, do you have an opinion relative to the public perception of and about political action committees?

A Yes.

Q What is your opinion?

A There is a public perception that there is—that is critical of political action committees and their role in the political system.

Q How, if at all, would that affect the relative ability of a corporation, on the one hand, or a corporation's political action committee to effectively communicate its thought by independent expenditures?

A This public perception is a deterrent to a corporate entity forming a political action committee in order to make independent expenditures.

[305] Q Speaking of deterrents, how does the cost of corporate political action committee administration—putting it another way, the administration costs of corporate political action committees compare to average administrative costs of corporations?

A They are superior or larger. The costs are very expensive to raise these voluntary dollars, 25 to 50 percent. It really depends what life cycle of a PAC you are studying. In the early informative days, years, it can be up to 100 percent or more than 100 percent of the amount of contributions are expended in information costs, administration costs.

Q Having in mind those higher administration costs, do you have an opinion as to whether or not that factor alone presents a substantial negative as to whether or not a corporation would form a corporate political action committee and engage in independent expenditures?

A Yes.

Q What is your opinion?

A It is a substantial deterrent to corporations, especially the smaller corporations, closely held businesses, but also some of the middle-sized corporations.

Q In fact, having in mind some of those factors we have reviewed, would all corporations, all Michigan corporations have the ability to establish and administer a political action committee?

[306] A No.

Q If we accept Mr. Epstein's theory or thesis that corporations and corporate political action committees are both "fungible," what reasons can you think of, based upon your experience and your training and your background in this field, as to why a political action committee is less likely to subvert or corrupt the integrity of the electoral process than a corporation acting on its own with respect to independent expenditures?

A I can think of no reason.

Q Now let's see if we can dispense at this point with discussions about political action committees. You heard Mr. Epstein indicate in the course of his testimony —

THE COURT: Excuse me. Let me just interrupt for a minute on that last question. Wasn't—as I looked at some

of that earlier material, wasn't it the sort of outrageous conduct of corporations in earlier years, buying city councils and state legislators, and then all the large corporations that got caught in the Watergate scandal, pleading guilty to making illegal contributions, was it to CREEP, the Committee to Re-Elect the President, and huge corporations like General Electric and other well-known corporations that pleaded guilty, now isn't there a public image of wrongdoing by public corporations if they're not some way regulated, wasn't that the whole purpose of this statute, to avoid the impropriety of [307] corporations buying candidates?

Now you say—I ask a question and then I go on and don't give you a chance to answer. That's one of the prerogatives of being a judge.

MR. BOYDEN: The other negative is the lawyer can't object to the judge's question as to the evidence that is coming in in this case, but I acknowledge it is a prerogative.

THE COURT: Which reminds me of the story of the judge who was asking a lot of questions. The lawyer said, "Judge, I don't mind you asking questions, but don't lose the case for me."

Well, so they go into this PAC in order to avoid that bad corporate image. Now historically it seems to me this is how this all came about. Now you are here as an expert, and you say, well, no, that is not true at all. The PAC somehow has a bad reputation and corporations don't. If corporations could spend freely, this bad image wouldn't exist.

Now I am not sure I understand. What's happened?

THE WITNESS: Several things have happened. There is a public concern, as when Tony Boyle, United Mind Workers, was convicted and served a prison sentence for commingling union funds in the labor community. There is a public image with all economic interests, corporations and labor organizations in terms of what is their proper role within our political system. The proper role has to be—in terms of a perspective, is what [308] I would call "prehistoric" and "historic." Prehistoric is virtually anything from the beginning of our country to 1976, including the Watergate era, because in 1976 the Supreme Court passed upon in Buckley and Congress through legislation codified the Buckley opinion. We entered into the modern era of campaign finance. What has changed between prehistoric before 1976 and after 1976 is that the—is the principle of disclosure and contribution limitations have been put in place. The law has been enforced. They have been tested and they appear to work. In other words, what in my judgment, what is most important is that there is disclosure to the electorate who is spending money, whether it is a corporation or a union; that disclosure has a disinfecting effect in terms of the public concern for the economic interest participation.

By imposing a limit on what the quantum of the contributions are and then disclosing what they are, then you have a knowledgeable public that can poll the land and know the allegiances of a candidate.

As I understood the question, it went to, in terms of the political action committee dollars or whether they're tied to a union and its PAC or a corporation to its PAC, there would be the same level of concern or lack of concern, there would be the same potential for corruption for either of those. So the question goes, what is the level of corruption?

I would suggest to the Court that properly [309] disclosed, that goes to timing early enough, close enough to the time an

expenditure is made and early enough in an election cycle with a widespread disclosure to the electorate, which is a function of appropriate disclosure collection of data from the central depository where the figures and the data are collected along with a policing function by the government, and what the amounts are would relieve the corrupting effect from these economic—the economic interest money.

THE COURT: Let me just interrupt. I am not sure there isn't some good logic to what you are saying, but shouldn't this be addressed to the legislature? Isn't it the legislature, shouldn't you be pointing out to the legislature there is an unfairness here, there is an image. They ought to change the law?

THE WITNESS: I would agree with that except where the legislature has violated the constitution, then it is the duty of this Court to apply Buckley and to rectify the unconstitutionality of, in my judgment, this section of the Michigan law. Buckley was clear. You cannot equalize groups by imposing different restraints on them. They had to be treated equally. That would appear to be the full thrust of the Michigan statute.

THE COURT: Thank you. Mr. Boyden himself couldn't have answered that question any better.

MR. BOYDEN: I would agree, your Honor.

[310] THE COURT: Let me ask you this—this is another advantage the Judge can take—Since we have been having some late documents offered, I happened to see in the paper this morning—that is even later than the document you tried to offer, Mr. Boyden—in which the House Speaker has appointed a bipartisan committee to trace hundreds of thousands of dollars being funneled into Michigan political campaigns by national political action committees, PACs. It says, "The effect of PAC money is magnified this year because groups supporting potential Republican presidential candidates are spending hundreds of thousands of dollars in Michigan to recruit GOP precinct delegates.

"On May 22, the Michigan Fund for America's Future voluntarily disclosed that it had spent $51,000 to help 47 GOP candidates in Michigan," and so forth.

"Owen, a Democrat from Ypsilanti, said that much of the money contributed to Michigan candidates goes unreported, so it is nearly impossible to trace how much money was contributed and which PACs made the contributions," et cetera. Now that obviously isn't directly germane here, but that is why I—there are obviously some loopholes in this whole PAC business. That is what I think prompted my question to you a moment ago as to whether or not we are not faced with a legislative problem here. If this gentleman is correct, the efforts to clean up the system through PAC doesn't seem to be [311] working very well either. I don't know whether he is correct or not, but the whole theory of PAC, as I understood it, was that you would be able to find out where the money was coming from and how much was being spent. At least according to this article in the news this morning, there are big loopholes in the PAC system, too.

THE WITNESS: Your Honor, one thing I would suggest to the Court is that—this alludes to the guide, again, of the Supreme Court in dealing with this whole campaign finance area, is that purposely it has created huge loopholes because, it says, the First Amendment requires it and demands it. So we have to be cautious in terms of whether loopholes is a pejorative term in the area of campaign finance. I would suggest that in the area of independent expenditures

where the Court said that there is no corrupting potential, that the ability of the state to prohibit corporations from making independent expenditures would violate the First Amendment, and that the Court is suggesting that this is a loophole opening area with independent expenditures, it is slightly different than the disclosure function in which there is close to universal agreement within the scholarly community with practitioners by government agencies, that there should be disclosure, as effective disclosure as is possible. I would agree with the Court that there are loopholes that are in a negative sense in terms of what is the totality of what is [312] being captured. For example, the whole union soft dollar program is beyond the keen of the public disclosure and is unknown. And as we found from my own testimony and Mr. Epstein's, it is best guess, best estimates, and it is a whole subterranean political action which is not known to the general public. Independent expenditures are visible and they're known by the public and they tend to encourage debate.

So, they're something different than the subterranean activities.

THE COURT: Well, why don't we go back and let Mr. Boyden try his own lawsuit.

All right, Mr. Boyden.

MR. BOYDEN: Don't mind at all. In fact, I will piggyback on one of the Court's questions.

Q What is the identity or the allegiance of the largest most active political action committees nationally, who are they, what kinds of organizations?

A Well, of the top ten PACs in the United States at the federal level, I believe six or seven are labor organizations.

Q Okay.

A This has been a trend for a number of years. They have been in the top ten in terms of making contributions on the national level.

Q Whatever the situation with political action committees, is your understanding what we are involved with here is simply [313] a question of the right of a group to make independent expenditures on an equal basis with other entities; is that accurate?

A Yes.

THE COURT: That raises another question I was thinking about during this month recess that we have had. I would think generally on a board of directors you are going to have a group of people that generally think socially and politically and economically in the same vein. Not always, but generally speaking. If you are a businessman and you are going to increase your boards, you are going to be getting other business people on your board to help you run your company, so that when a corporation decides that they want to spend money on an independent expenditure for—to defeat Congressman X or whatever, I think—my guess would be that generally speaking you wouldn't have a big internal fight on the board of directors, but in the labor field, more and more aren't the members of the labor unions raising objections to their dues being spent for political activity? You get hundreds of thousands of members and you are going to get—they're going to range, the whole spectrum in their political views, and if you are a Republican and the Board of Directors of the Union decides to spend the money on behalf of some Democratic candidate, you are not going to like it. I have already had a number of those cases in my court. Of course the Supreme Court [318] issue, whether political action committees should carry out a corporation's election-related activities?

A Yes.

Q What is your opinion?

A I don't believe they should.

Q Why not?

A It's a different representative—why eliminate the simplest and most direct form of political communication and permit and encourage an indirect, the same thing indirectly. That does not make sense.

Q It does to me and I hope it does to the Court.

With respect to Mr. Epstein's testimony about contributions and independent expenditures, he testified that there is, quote, "Very little difference between an independent expenditure and a contribution," close quote. Do you agree or disagree?

A I disagree.

Q Why?

A It is apples and oranges. It is black and white. There are all the differences in the world. You start with—what you are talking about, money versus speech, contribution generally takes the form of a check from a spender to a candidate; an independent expenditure generally takes the form of a public advertisement. The checks are less visible than the advertisement. The advertisement will carry disclosures, [319] who it was paid for, whether it was authorized by a candidate, who paid for it. It will generally raise an important election issue. By raising the issue before the electorate in a public way, it will serve as a lightning rod for competing views and will be attacked and supported by various other persons within the

public, thereby permitting greater identification on the issue and reasons one should be for it or against it, and thereby facilitates robust debate on the issue of the day.

THE COURT: Let me ask you this: Let's assume if you are a candidate, you are going to want to run advertisements in the newspaper, the type of thing you are talking about independent expenditures might do, raising some, where this candidate stands on some issue. Now what difference does it make if you give—if you give the money by check to the candidate and then he takes out an ad in the Grand Rapids Press or whether you pretend you don't have any communication with him at all and you just go down to the Grand Rapids Press yourself and say, "I want to run this advertisement." Aren't they both apples or both oranges?

THE WITNESS: Absolutely not. Almost universally the candidates attempt to dissuade and discourage supporters from being involved in independent expenditures. They are uncontrolled. The campaign is—you attempt to orchestrate and control everything that occurs in terms of communicating with the public. When you have independent agents out there

* * *

[334] Q Mr. Epstein testified that the Chamber and other Michigan corporations are not hampered in any way, as he put it, from participating on an equal basis with other non-corporate entities in Michigan electoral processes under Section 54. Do you have an opinion as to whether or not that is accurate?

A Yes.

Q What is your opinion?

A It is not accurate.

Q Why not?

A The Chamber is banned from undertaking the simplest and most direct form of political communication with independent expenditures from their treasury funds.

Q I know that you touched upon this in some form before, but let me ask it again to be sure that any elements you wanted to discuss are touched on. Why do you believe that independent expenditures, which, as you just put it, are the simplest and most direct form, have little or no potential to be a corrupting influence in the electoral process?

A Well, I think to put my thumb on the strongest element of independent expenditures, is their visibility and disclosure, such that they are in the—it is not black bag, it is not under the table. This is out in the open such that the public can see who makes the expenditure and whether it was authorized or not authorized by a candidate. For example, should a major union or a major automaker undertake an independent [335] expenditue, if the statute treated them equally in terms of their ability to make an independent expenditure, the public is able to gauge that, who is the speaker, and when they are supporting a candidate, the citizens can decide, do I want to vote for a candidate who has—who is in line with General Motors or UAW in terms of this communication. So there is a natural disinfectant, if there is any corrupting influence on these independent expenditures, which I don't believe there is. In fact, they tend to facilitate a robust debate. Often candidates escape robust debate on the issues of the day and tend to avoid them. For example, in the hypothetical given this morning in terms of the Joel Boyden candidacy for Congress.

Q We are back to that.

A A candidate may try to avoid discussions on many of the social issues, abortion, prayer in schools, busing, because they try to avoid them because of the visceral reaction of the electorate and it becomes uncontrollable in terms of promoting a candidacy. Independent expenditures are free to speak on the issues of the day that, for example, the citizens of the State of Michigan or the American people, and to facilitate a bit of debate on those issues, and therefore they can have a helpful effect in an election encouraging debate on issues which both candidates, competing candidates will attempt to stay away from.

[336] Q If indeed independent expenditures are said to have a potential corrupting influence, is that corrupting influence more likely to come from corporations as from any other entity within the electoral process?

A No.

Q Mr. Mayberry, do you have an opinion as to whether or not corporations should have a role in the electoral process?

A Yes, I do.

Q What is your opinion?

A I believe corporations, as labor organizations, have a vital role in the policy development of our government in dealing with issues. The basic essence of our system and our freedom is realized on our capitalistic system in a healthful economy, and government has a profound effect on business and labor in their own interaction. Accordingly, the input from these two sources, business and labor in terms of developing public policy issues, especially those dealing with economic issues in which they have the keen and expertise to comment to the public, is of vital importance to a properly functioning government.

Q Okay. Let me switch gears just for a few moments. Upon voir dire as to your qualifications back on May 12th, maybe that is not the right date, whatever it was that we were last in session, Mr. Gartner, acting as the counsel for the defendant, suggested you had been involved in what he termed as

* * *

(Witness: E. James Barrett)
Barrett - Direct

[390] directors. I also am involved in various activities as a spokesperson for the State Chamber, and as a liaison with other organizations who share mutual interests.

Q When you say you are involved as a spokesperson what do you mean by that?

A As the president and chief executive officer, it is my responsibility to make public statements regarding the positions of the Michigan State Chamber and our membership to the media and the general public and in various forms throughout the state.

Q Okay. Admitted into evidence by stipulation are the bylaws of the Michigan State Chamber of Commerce and a listing of the Board of Directors of the Michigan State Chamber of Commerce for 1985-'86.

MR. BOYDEN: For the Court's reference, the bylaws are Exhibit No. 9 and the Board of Directors listing is Exhibit No. 10.

Q You may refer to any copies of those which you have with you, Mr. Barrett, in answering the following questions:

Would you please give the Court a general description of what it is that the Michigan State Chamber of Commerce is, describe the organization.

A The Michigan State Chamber of Commerce is a nonprofit organization made up of about 8,000 individuals and business entities. These are individuals in businesses that have [391] voluntarily joined together through their membership in the Michigan State Chamber. They share common beliefs and ideals. They join because they expect the Michigan State Chamber on their behalf to promote the common good and their interests for the business community. We are an ideological corporation advocating our private enterprise, such things as physical restraint in government operations, regulatory policies that are fair to the business community, and advocating the business point of view on regulatory and political issues that affect our membership.

Q With respect to the purposes of the State Chamber, would you indicate, please—I know that you have touched on some of those as you have answered my previous question—would you indicate, please, specifically what those purposes may be from the bylaws?

A Yes. Looking at our bylaws—and I'll just comment briefly on some of the key provisions of the objectives and purposes. A major one, of course, is to promote conditions that are favorable to economic development and enhancement and preservation of the private enterprise system; to provide information on laws and regulations that are of interest to our members, and of course make the members' views known to government; to provide training and education to our members through educational materials, seminars, conventions and so on; to promote ethical business practices and standards of conduct; [392] to collect data and provide information relative to social, civic, and economic importance to

the state; to receive expenditures and make contributions for political purposes; to be involved in the establishment, administration, and solicitation of contributions to our political action committee, and to cooperate with organizations who are formed for similar purposes and share those mutual interests.

That is a brief overview of our objectives and purposes as outlined in the bylaws.

Q Surely. Now, if you would, please, Mr. Barrett, with respect to the makeup of the Chamber, you have indicated about 8,000 members. Tell me, if you would, please, who it is that make up that membership, if you could give us kind of a cross-section?

A The membership of the Michigan State Chamber is very diverse. If we look at our membership from the standpoint of size of member firms using information that was available around the first part of April, we'll see that our members' breakdown by size with ten employees or less, a little over a thousand or roughly 15 percent of our members; about 57 percent of our members or around 4,500 members have 50 employees or less; about 80 percent of our membership or about 500, I believe, have 100 employees or less; and then approximately 20 percent or a little over 1,500 of our members have more than 100 employees.

[393] The other way of viewing the membership breakdown is often by the type of businesses that we represent.

Q Tell us a little bit something about that.

A It is very diverse, which is common with chambers of commerce. Manufacturing would be the largest, about 33 percent of our members. Retailing has about 12 percent. Financials and real estate, which would include

banks and savings institutions, make up about five percent. Construction firms, approximately 5 percent. Wholesale, about 14 percent. Services, about 17 percent. These are all based on standard industrial codes from Dun & Bradstreet, and it is a way to categorize business firms by classification.

Q Okay. With respect to governments of the Chamber, how is it that the Chamber is run? What is the governing body?

A The governing body of the Chamber is a Board of Directors that reflects the diversity of our membership. We are broken down throughout the state by eight geographical areas for purposes of electing directors—

Q Excuse me again, Mr. Barrett, if I could interrupt for a moment.

MR. BOYDEN: For the Court's benefit, this is really reflective of Exhibit 10 in our bench book of exhibits.

THE COURT: Thank you.

Q Go ahead. You mentioned you were broken down into regional groups of directors.

[394] A We also have at-large members, too. These people are elected by the membership and serve two-year terms, a maximum of three terms each if they're reelected.

Q Would you be able to indicate to the Court whether or not the diversity in your membership is similarly reflected in diversity in interests on the Board of Directors?

A I think that would be a fair statement, looking at both size and types of firms that are represented on our Board.

Q Tell the Court now, if you would, please, Mr. Barrett, how or what relationship there is between the State Chamber of Commerce and the local chapters or the local chambers of commerce that are throughout Michigan.

A In Michigan we have, of course, just one State Chamber of Commerce. We have roughly 250 local chambers of commerce. Each of them is a separate and independent organization with their own bylaws, their own board of directors, and they establish their own policies. So they are independent and separate entities by law.

There is a working relationship between the state and local chambers of commerce on many issues, legislative and regulatory being primary ones.

Q Incidentally, when did the State Chamber of Commerce come into being?

A The Michigan State Chamber of Commerce was formed in 1959, so as state chambers of commerce go, it is a relatively young [395] organization.

Q Is there an executive committee which has any part of the activities of the state—Michigan State Chamber of Commerce?

A Yes. The executive committee is made up of twelve individuals, eight regional vice-chairmans, chairman of the board, a treasurer, and an immediate past chairman, all of whom are business people, serve on a voluntary basis. The other member is myself as the president and chief executive officer.

Q In pursuance of the Chamber rationale for existence, that of an ideological organization, why does the Chamber conduct political activities?

A As I indicated from our bylaws, one of the basic purposes of the Michigan State Chamber is to be involved in representing the views of its members in the legislative and regulatory process, and we have done that from the inception of our organization in 1959. Later in the development of the Michigan State Chamber, it was felt that it was important to be involved in the political process, because those people that are elected through the political process ultimately are the ones that make the decisions relating to the regulatory and legislative process. Therefore our members from throughout the state felt that it was important that we become more involved in trying to help elect those people to public office who had an understanding of the importance of job development and who would have a good appreciation of the need to try to enhance [396] our business climate here in the State of Michigan through the policies they adopt.

Q In those areas where political activities are permitted under the Michigan legislation laws, how do the organizations of the Michigan State Chamber of Commerce decide on what activities it will undertake and what it will do in support of those activities?

A Are you talking about political activities, or are you talking about legislative activities?

Q Let's stick with political activities for the moment.

A The Michigan State Chamber of Commerce has set up a separate entity, political action committee that is involved in helping to elect people to public office who we think share our goals in job development for the State. There is an endorsement process for candidates for public office. In the case of incumbent legislators, decisions are made regarding their voting records and key business issues during the previous legislative session. If they obtain a certain level of support for many of the issues that are important to our

organization, then we automatically give them an endorsement, whether they be Republicans or Democrats.

In the case of non-economic legislators or people who are running for an open seat, we make an assessment based on an interview process and based on their response and attitude toward some of the key job development issues that our [397] membership is very interested in.

Q Who is it that actually make the decision to support or not support and the activities to be engaged in?

A As with other organizations that have political action committees, we have a PAC Board of Directors. It includes six individuals who ultimately have the responsibility for making the endorsement decisions, for making the decisions about the distributions of the voluntary contributions that are made by our members to our political action committee.

Q How are the board of directors of the political action committee of the Chamber related to the board of directors of the Chamber?

A There is no direct relationship, that is, the qualification for being a member of the PAC Board of Directors is not related in any way to the Board of Directors of the Michigan State Chamber of Commerce except that PAC board members must be members through their companies of the Michigan State Chamber of Commerce, and of course must be supportive of our political action efforts and have a keen interest in that area. The members of the PAC Board of Directors are appointed by the Chairman of the Board of Directors of the Michigan State Chamber.

Q Okay. Talk with us now a little bit about the legislative activities of the Chamber itself apart and distinct from the political action committee. How are those particular

activities decided upon and who carries them out, who and how [398] are they carried out?

A Again, like most organizations, we have committees of the Michigan State Chamber. They're made up of business people from member firms who volunteer their time and expertise on a broad range of issues covering everything from taxes to worker's compensation to environmental issues, energy issues and others. They develop policy recommendations to our board of directors. The directors meet on at least a quarterly basis and set the general policy guidelines for the membership and for the State Chamber. On the basis of those policy guidelines, volunteer members of committees, other members, directors and the staff of the Michigan State Chamber try to advocate those policies through the legislative and regulatory process.

Q Before we go too far down the track, Mr. Barrett, what kind of an entity is the Michigan State Chamber of Commerce from a legal standpoint, if you can tell us that?

A It is a nonprofit corporation established in the State of Michigan.

Q Okay. Are the political activities of the Chamber and of the Chamber Political Action Committee regulated by Michigan law?

A Yes, they are.

Q Are you familiar with Section 54 of Act 388?

A I am generally familiar with that legislation and that

* * *

[403] MR. GARTNER: Thank you.

BY MR. BOYDEN:

Q What is the effect of the curtailment of the Chamber and members of the Chamber of the right of free speech and advocacy under Section 54?

A It puts us at a disadvantage in presenting our point of view on behalf of our business constituency in the State of Michigan, and the end result of that is, in many cases, a perspective is not presented to help in the formulation of public policy and in the debate that goes into that process so that hopefully we will have better decisions made relating to regulatory activities in this state. We have lost a significant viewpoint from the job providers and the investors that fuel Michigan's economy.

Q What reasons are you aware of as existing which would justify the disparate and equitable treatment of the Chamber and other Chamber corporations, on the one hand, as opposed to the competing political and economic interests whose political participation in independent expenditures is unfettered?

MR. GARTNER: Objection, your Honor. That is calling for an opinion.

MR. BOYDEN: I am not asking for an opinion. I am asking for any reasons he knows of.

MR. GARTNER: Your Honor, Mr. Mayberry testified and gave his answers to those same questions as an expert. Mr. [404] Epstein gave his opinions. Mr. Barrett is a lay person, is not qualified to give his opinions, since he has not been qualified as an expert witness. He is a lay witness to testify about the Michigan State Chamber of Commerce. Whatever reasons there are for the treatment of corporations and

noncorporate entities in Michigan is a matter for expert testimony, which has been testified to and is not a matter nor within the expertise of Mr. Barrett.

MR. BOYDEN: The question, as framed, specifically said to Mr. Barrett, "What reasons are you aware of?" Now if he is aware of any, he will say. If he is not aware of any, that is what he will say. If he's aware of any, he will give some reasons. That isn't an expert question at all. It is a question that relates to his experience in the field as the chief executive officer of the State Chamber.

THE COURT: I will overrule the objection. I will take the answer.

BY MR. BOYDEN:

Q Do you want me to rephrase it?

A I don't know of any reasons, in answer to your question. You know, following the Attorney General's line of argument here, it seems to me that basically what is being said is that in the case of the Michigan State Chamber of Commerce, if we weren't a corporation, no one would be suggesting the government say, "No, we can't be involved in making independent [405] expenditures." Simply because we are a corporation, we aren't being allowed to be involved in that activity.

The argument is being presented or has been presented that through a political action committee we have a voice in the process. A political action committee involvement is greatly dependent upon the ability to raise, in the case of our organization and similar organizations, volunteer contributions from our members. If you are not a good fund raiser, then you are being precluded because of the prohibition on

independent expenditures in speaking out on many of the important public issues that need to be debated.

Q On June 10th of 19—

THE COURT: Excuse me. A thought just comes to mind. You think of a corporation as manufacturing mobile homes here in Michigan, and my broker talks me into investing $5,000 because it is a good investment and I want to make some money on it. Now Mr. Boyden is going to run for—we'll have him run for the State Senate. We'll move him up a little bit this afternoon. I may never have heard of him, with all due respect, don't know anything about his views. Is there any real reason you can think of why corporations should be spending my money that I'm anxious to be invested in the mobile home business to help elect Mr. Boyden to the State Senate? If the board of directors is interested in Mr. Boyden's views on economic issues and think he would make a good senator, is [406] there any reason why they can't, as a stockholder, send me a letter and ask me to make a contribution rather than spending corporate funds for that purpose? I just—you make the point here that the corporations are being treated so unfairly. Is the corporation really set up in our society for getting into the type of activities we are talking about?

THE WITNESS: If we look, your Honor, at the impact of regulatory and legislative policies on the ability of corporations to be profitable, to provide job opportunities, clearly there is an interest in having their direct involvement in the political and legislative process.

Using the mobile home industry as one example, I am sure there are many tax policies, worker's compensation policies, unemployment insurance policies, environmental regulatory policies that are set by our state legislature and those that

are elected to public office that could be the difference between the success of that mobile home company and industry and the failure of that industry. So it is absolutely essential that they have every right and opportunity to be involved in the process that they possibly can. And, in fact, through their involvement in many cases, a strong argument could be made that it is not only in the company's interest long term, it is in the shareholders' interest, in the employees' interest that they be involved.

BY MR. BOYDEN:

* * *

[416] Q "Alter ego" is another word that was used.

A I don't think that that is a fair characterization.

Q Why not?

A I think it is fair to say that there is some relationship between the Michigan State Chamber of Commerce and the State Chamber's PACs, that is obvious, because in order to contribute to the PAC, one has to be a member of a firm or be employed by a firm that is a member of the Michigan State Chamber of Commerce.

Again going back to a point that I attempted to make earlier, if we look at the number of member firms represented within the Chamber and the number of contributors to our political action committee; there is a significant difference in those numbers, and as a state chamber of commerce, we have an obligation to speak on behalf of our entire business membership through the auspices of the nonprofit corporate entity, the Michigan State Chamber of Commerce, and not just through the auspices of our political action committee which serves voluntary contributions, again from a relatively

small number of individuals in relationship to the number of member firms that we have.

Q With specific reference to the Michigan State Chamber, Mr. Barrett, under your leadership and with the direction and impetus provided by the Board, would you tell the Court whether or not the State Chamber has worked toward and achieved a [417] higher credibility rating than many other similarly situated organizations and advocacy groups?

A There is no question about public opinion polls have demonstrated that. Looking back to the Banstra campaign here in the Grand Rapids area, we saw from polling that was done, that the Michigan State Chamber of Commerce name had a high level of credibility, especially in relation to a lot of other organizations, including, for example, labor organizations.

We also know from other independent polls that have been done, one was reported not too long ago in the newspaper. It was a poll by the Democratic party where they asked, as I recall the article, a sample of voters from throughout the state what they viewed as the most credible organization in making decisions based on endorsements. And out of 30 organizations, the state and local chambers of commerce were number one. And there are other similar surveys that have been done.

So, relatively speaking, yes, the Michigan State Chamber has a high degree of credibility on public policy issues.

Q Contrast that credibility, if you would, with the credibility about which you may have any knowledge in conjunction with the Chamber Political Action Committee.

A Specifically regarding the State Chamber's political action committee, we don't have any survey data, but I think

[418] most everyone is aware of the type of PAC burning that has gone on in the media and by various interest groups who have been opposed to the involvement of businesses and corporations through political action committees.

So I think that you know there is a relatively high degree of criticism that is being put forth from various interest groups for political action committee programs at the present time.

Q Does that provide then a substantial explanation of why the Chamber and its members corporations is different, that it cannot accomplish its political goals and purposes through the Chamber Political Action Committee to the same degree it could as if it were allowed to make its own independent expenditures?

A We firmly believe that through independent political expenditures we could have a greater impact and it offers us another alternative for being involved in the debate or public policy issues, again an option that is granted to other entities that are involved in this process and the prohibition that is directed at organizations such as ours.

Q If the First Amendment freedoms that we claim are the rights of the Chamber are restored and it is allowed to make independent expenditures, how would the Chamber use that right?

A As I indicated in earlier answers, we would use it through such vehicles as the purchasing of advertising in newspapers, on radio and television, and we would try and communicate with

Barrett-Cross

[424] MORNING SESSION, FRIDAY, JUNE 13, 1986, 8:45 A.M.

THE COURT: Mr. Barrett, good morning.

THE WITNESS: Good morning.

MR. GARTNER: Good morning, your Honor.

THE COURT: Good morning. You may proceed.

MR. GARTNER: Thank you.

CROSS-EXAMINATION OF E. JAMES BARRETT

BY MR. GARTNER:

Q Mr. Barrett, you testified yesterday that the State Chamber consists of approximately 8,000 members; isn't that correct?

A Yes.

Q Isn't it true that more than 75 percent of your members are corporations?

A I would think that that would be a fair statement.

Q All right. And of those corporations that are members of the State Chamber, isn't it true that the majority of them are for profit corporations?

A Yes.

Q Now with respect to the approximately 25 percent, the remainder of your membership, isn't it a fact that those entities are noncorporate entities?

A In the earlier question, I believe you framed it to say at least 75 percent, and I would think that the figure would be higher than that are incorporated businesses. So I am a little [425] bit uneasy about using 25 percent as unincorporated, because I don't think that would be a fair statement of the actual makeup of our membership.

Q Of the remainder of your membership, isn't it true that they are nonincorporated entities?

A Yes.

Q And as a nonincorporated entity, isn't it true that they could make independent expenditures, which is the subject of this lawsuit?

A That is my understanding.

Q Isn't it also true that E. James Barrett as an individual could make independent expenditures, which is the subject of this lawsuit?

A I don't know that the subject of this lawsuit is whether E. James Barrett could make independent expenditures.

Q No, that is not my question. My question is as an individual.

A Yes.

Q All right. And isn't it true, for example, of Mr. Boyden, as an individual, as your understanding of the law, couldn't he also make independent expenditures?

A Yes.

Q Now you indicated you were the president of the State Chamber and also the treasurer of the State Chamber Political Action Committee; isn't that true?

[426] A Yes.

Q The PAC was formed in 1977?

A Yes.

Q Isn't it true that as the treasurer of the State Chamber Political Action Committee, you are the person required by law for keeping the records of the political action committee?

A I have that responsibility.

Q You are also, as the treasurer of the political action committee, the person that has to sign the campaign finance reports that are filed with the Secretary of State's office?

A I do sign them.

Q How many employees work for the State Chamber of Commerce?

A At the present time we have 34 employees working with the Michigan State Chamber.

Q All right. And isn't it true that some of these Chamber employees work on matters involving the State Chamber and also work on matters involving the State Chamber Political Action Committee?

A Yes.

Q All employees of the State Chamber are paid by the State Chamber; isn't that correct?

A Yes.

Q So there is no division of duties and functions, is there, between employees who work on State Chamber matters and who also work on State Chamber Political Action Committee matters?

[427] A Would you repeat that question, please.

Q Certainly. Perhaps I can rephrase it. Is there any division of duties of an employee who does work for the State Chamber and also does work for the State Chamber Political Action Committee? I mean, isn't it true that they are, in essence, combined into one?

A Let me try to answer your question in a fair manner.

As you have indicated, all the employees are on the State Chamber's payroll. We do have some that work in a for-profit capacity, too, for a subsidiary corporation, but that is unrelated to the political activity. We have some people who have responsibilities in the political area who also work in several other areas.

Does that address your question?

Q Yes. Thank you, Mr. Barrett.

Now you also testified yesterday that the State Chamber solicits contributions to its political action committee; isn't that true?

A Yes.

Q And based on your understanding of the Campaign Finance Law, Mr. Barrett, isn't it true that there is no restriction on the number of times that a—that the State Chamber can solicit contributions to its political action committee?

A Under the law I don't believe that there are any re-

strictions. There are some real considerations that have to [428] be given, though, as far as the number of times that you can solicit a member of the State Chamber and expect them to respond favorably.

Q But with your understanding of the law—and correct me if I am wrong, Mr. Barrett—there are no restrictions contained in the law as to the number or timing of solicitation of contributions to the State Chamber Political Action Committee?

A That's true.

Q Does the State Chamber expend its funds for the purpose of administering the State Chamber Political Action Committee?

A Yes, as provided by law.

Q And that is the same with respect to the cost of solicitation, the State Chamber uses its funds for the solicitation costs of soliciting contributions to its PAC?

A Yes.

Q And the establishment of a PAC, would that also be true that the State Chamber expended its funds in establishing the political action committee?

A Yes. Again, as provided by law.

Q For the current fiscal year, can you tell the Court how much money the State Chamber has expended for solicitations of contributions to its political action committee?

A No. As I indicated in my deposition, we don't maintain that kind of information.

Q Thank you. Can you tell the Court for the last fiscal [429] year completed by the State Chamber, how much money the State Chamber expended for the purpose of soliciting contributions to its PAC?

A No. Again, we offered that that information could be made available, and there was no request made for that information as a follow-up to our deposition.

Q That is not my question, Mr. Barrett. My question is can you tell the Court today how much money the State Chamber has expended for the purpose of soliciting contributions to its PAC for this year, for the last fiscal year or for any fiscal year; and your answer is no. Isn't that correct, yes or no?

A That is correct.

Q Thank you.

A There is no legal requirements —

THE COURT: Just a minute. If you will listen carefully to the question—I know that question and answer isn't the normal way that people normally converse. If somebody says something and you say yes or no but you think it needs further explanation, attempting to do that, but under the court procedures the attorney who's doing the cross-examination has a right to expect just an answer to that question. Now Mr. Boyden, if he thinks a further explanation is necessary in any of your answers, he will have a chance then to have you explain something further. So by the time you get off the stand, hopefully you are going to have a full opportunity to say what [430] you want to, but on cross-examination the examiner has a right to just a specific answer to the question he is asking.

THE WITNESS: Okay. This is my first appearance in court, so I appreciate the background.

THE COURT: Okay.

MR. GARTNER: Thank you, Judge.

Q Would your answer be the same, Mr. Barrett, with respect to administering the State Chamber Political Action Committee, that you are unable to tell us how much money the State Chamber has spent in the current fiscal year for the purpose of administering State Chamber Political Action Committee?

A Unable at this time.

Q Thank you. Would that be true of the last fiscal year?

A Yes.

Q And previous fiscal years back to 1977?

A Yes.

Q Can you tell the Court how much money the State Chamber expended for establishing the State Chamber Political Action Committee?

A Not the specific figures. It would have been minimal.

Q Thank you. Yesterday you also testified regarding the governing board regarding the State Chamber Political Action Committee. Correct me if I'm wrong. It consists of a six-person board of directors?

A Yes.

* * *

[434] there may have been subsequent opinions by the Attorney General. I must admit I wouldn't be qualified to speak on particular opinions.

Q But isn't it true that the PAC Board of Directors was established by the State Chamber?

A Yes.

Q Thank you. When the Complaint was filed in this case, Mr. Barrett, did you have an opportunity to review it at any time?

A I have reviewed it in the past.

Q All right. And in connection with the Complaint, isn't it true that you also filed an affidavit dated May 23, 1985? If you would like, I can show you a copy of it.

A I think I have a copy of it before me. The verification of complaint is what you are referring to?

Q It was an exhibit attached to the Complaint entitled "Affidavit of E. James Barrett."

A It might be helpful if I had a copy of that, if you think it is necessary.

Q Sure.

A Yes.

Q All right. Thank you. And in paragraph 2 of that affidavit, I believe, doesn't the affidavit recite that the State Chamber of Commerce is a Michigan nonprofit corporation?

A Yes.

Q Isn't it also true in paragraph 1 of the Complaint it [435] recites that plaintiff, Michigan State Chamber of Commerce, is a nonprofit corporation?

A Yes.

Q Isn't it also true, Mr. Barrett, in the articles of incorporation of the Michigan State Chamber of Commerce, that in Article 2 of the articles it provides several purposes for which the corporation was formed.

I will show you a copy of the articles of incorporation.

A Yes.

Q So isn't it true that the Michigan State Chamber of Commerce is a multi-purpose corporation?

A I am not sure I understand what is meant by "multi-purpose." If you are referring to the various purposes under Article 2, the answer is yes.

Q Thank you. May I have this back, please.

A Sure.

Q Yesterday you testified with regard to your understanding of Section 54 of the Michigan Campaign Finance Act, and isn't it true that the Michigan—that the law does not prevent the Michigan State Chamber of Commerce from expressing its views of issues to the public?

A That's true.

Q And that it only applies in the area of candidate endorsement and opposition?

* * *

[443] committees contributed or spent over $35,000 in the special State Senate election in Grand Rapids?

A I believe that is true.

Q Isn't it true that the State Chamber Political Action Committee is projecting having over $140,000 to spend in 1986 in the primary general elections?

A Yes.

Q Isn't it true, Mr. Barrett, that is 40 percent more than the State Chamber raised in 1984?

A Roughly.

Q The State Chamber PAC. Isn't it true, Mr. Barrett, that the Banstra ad that has been admitted into evidence—and I don't recall the exhibit number, which was originally attached to the plaintiff's Complaint, that that ad could have been sponsored by the State Chamber Political Action Committee?

A Yes.

Q Isn't it true that E. James Barrett could have paid for that ad out of his own funds?

A Yes.

Q Yesterday you discussed your participation and involvement in the legislative debates leading to the enactment of the 1976 Act enacting the Campaign Finance Law; isn't that correct?

A There was discussion about that.

Q Did you attend all the committee hearings that were held in the House of Representatives in the State Senate when Act

* * *

[446] Q You also talked yesterday regarding your views on the distinction with respect to corporate entities and media corporations, and you gave some testimony on that issue—do you recall that testimony?

A Yes.

Q Would you agree with me that the business of General Motors is to make cars?

A In part, that's true. As you are probably aware, General Motors is a much more diversified corporation today than they were a few years ago.

Q Wouldn't you agree that at least 50 percent of the business of General Motors is to produce automobiles?

A Yes.

Q Isn't it also true that one of the purposes of a bank is to make loans —

A Yes.

Q — to people that come in?

A Yes.

Q All right. Isn't it also true, Mr. Barrett, that one of the purposes of a newspaper is to editorialize?

A I never indicated otherwise, I don't believe.

Q Mr. Barrett, does the State Chamber of Commerce contribute corporate funds to ballot question committees?

A We have in the past.

Q Isn't it true that in 1984 the State Chamber contributed [447] $5,000 to a ballot question committee called "Citizens for Proposal A"?

A I believe that's true.

Q Isn't it true that the executive committee of the State Chamber passed a resolution that they would make a contribution of an additional $36,000 to the ballot question committee entitled "Citizens for Proposal A"?

A I don't recall the specific figures or action that was taken at that time.

Q Perhaps I can refresh your memory, Mr. Barrett. Excuse me. I keep losing things.

(Mr. Gartner handed a document to the witness and to the clerk for the Judge.)

Q Mr. Barrett, in order to clarify the record, I am showing you a copy of an affidavit signed by E. James Barrett in the case of Michigan State Chamber of Commerce versus Richard Austin, which is in the Eastern District of the State of Michigan before the Honorable John Feikens, file number 83W2263TD; is that a copy of the affidavit that you signed with respect to that case?

A Yes.

Q And my question is, did the executive committee of the board of directors of the State Chamber of Commerce resolve to contribute an additional $36,000 to the ballot question committee entitled "Citizens for Proposal A"?

* * *

[449] THE COURT: Do you think—is that incorrect?

MR. BOYDEN: I don't know.

MR. GARTNER: I was just responding to a question from the Court.

THE COURT: Well, he asked about the House, and that just naturally raised an interest as to what the Senate vote was.

MR. BOYDEN: I understand, and for the record I don't have any reason to doubt that is correct, but I am just not sure of the method of getting that before the Court.

THE COURT: All right.

BY MR. GARTNER:

Q Mr. Barrett, does the State Chamber of Commerce spend corporate funds for the purpose of lobbying members of the legislative and executive branch of state government?

A Yes.

Q Does the State Chamber of Commerce expend corporate funds for the purpose of communicating its views on political candidates to its members through reports, such as the executive report?

A Yes.

Q Does the State Chamber of Commerce expend corporate funds for the purpose of contributing to candidate officer holder expense accounts?

A On occasion.

* * *

(Witness: Robert S. LaBrant)
LaBrant - Direct

[474] — administrating the State Chamber Political Action Committee, I also lobby on behalf of the Michigan State Chamber of Commerce, primarily on issues that relate to the Campaign Finance Law, the election law, the lobby law, reapportionment issues, in that context.

Q In addition to the defined duties which you have in your position with the Chamber of Commerce, are you familiar with the general overall operation of the Chamber, at least to some degree?

A Yes, I am.

Q Okay. Would you give a description, please, of the nature of the Michigan State Chamber of Commerce.

A Well, the nature of the Michigan State Chamber of Commerce, first of all, it is a nonprofit corporation under the Michigan law. It's organized as a 501(c)(6) organization under the Internal Revenue Code. I think in a shorthand fashion the Michigan State Chamber of Commerce represents the interest of the business community in Michigan with state government, be it in the legislative halls, be it with the departments in the regulatory process, sometimes in court, and in the political arena on issues, ballot question issues, and also on the election of candidates to public office.

Q Do you believe it to be an ideological organization?

A I think the Michigan State Chamber of Commerce would fit the definition of an ideological corporation. We basically [475] promote the private enterprise system and believe in limited government, fiscal responsibility.

Q Now, Mr. LaBrant, you have been present during the entire course of this case, have you not?

A Yes, I have.

Q You've heard all the testimony?

A Yes, I have.

Q Okay. I will not ask you to repeat, in response to my questions, all of the detail that has been given by other witnesses. I'm perfectly content to have you do it in a shorthand or affirming fashion, if that is more comfortable for you and I think more economical for the interest of the Court and the parties, but I do want to touch on some of the things that have been raised and testified to by other witnesses.

Would you describe, please, the Chamber's involvement in the political and electoral process in the State of Michigan?

A Well, the State Chamber since 1977 has had a separate segregated fund, the State Chamber Political Action Committee. That committee is used to support candidates in their quest for nomination or election to public office.

In addition, the Michigan State Chamber of Commerce is involved and has been involved in statewide ballot question campaigns. On a frequency of almost every two years, we've been involved in some issue of concern for our membership.

* * *

[478] Q As you described your job duties and activities as an employee of the Chamber, you indicated that you are involved in the political action work and you were involved

in the lobbying work, would you indicate, please, the identity of the entity—the entities and interest groups that you most often find on the opposite side of issues that are being promoted in the electoral process by the Chamber?

A I think primarily when we deal with issues like worker's compensation or unemployment compensation, some environmental matters, that generally representatives from the AFL-CIO, the United Auto Workers, ASNE, some of those groups are probably our principal adversaries on legislative issues that we deal with at the State Capitol.

Q Would you please indicate, based on your knowledge of Section 54 and your experience, whether or not those particular entities are handicapped in any way in making independent expenditures from their organizations rather than from their political action committees?

A None of those three organizations that I mentioned are prohibited by Section 54 from using their treasury funds to make independent expenditures or, for that matter, direct contributions to candidates for public office.

Q Okay. You heard Mr. Barrett testify with respect to the purposes of the Michigan State Chamber of Commerce; is that correct?

[479] A Yes, I did.

Q Do you agree that those are purposes which you attempt to carry out through the political activities which are your responsibility?

A I believe that to be accurate.

Q Do you have any personal knowledge, based upon your experience and time and grade with the Chamber, of the variety of interests that are represented by the multiple

corporate interests, who are members of the Michigan State Chamber of Commerce?

A Well, an organization with 8,000 members probably by its size would have—would represent a multitude of interests, but we basically try to speak as a united voice for Michigan business. And as a result, included within our membership base are large corporations, small businesses—I think Mr. Barrett indicated that perhaps somewhere around 80 percent of our membership is firms of a hundred employees or less. The makeup of the State Chamber is such that it consists of manufacturers, retailers, agricultural firms, mining interests, local chambers of commerce, other trade and professional associations as well as some interested individuals.

Q So it is a wide and divergent group of interests and entities which make up the Chamber?

A That's correct.

Q Are you able, Mr. LaBrant, from the discharge of your [480] responsibilities and activities and your experience in carrying out those things, to testify as to whether or not the Chamber Political Action Committee is as effective a mechanism for the making of independent expenditures as would be the Chamber itself acting on its own?

A The political action committee, first of all, is limited in the size of its fund, basically by the amount of money that we can raise from individual voluntary contributions from a select group of individuals who fit within our membership base. And as a result, our speech, in the context of independent expenditures, if we go through the political action committee mechanism, is limited by our ability to be good fund raisers as far as the State Chamber PAC is concerned.

THE COURT: Let me ask you, though, isn't there something to be said for—you get involved in some sort of a controversial political issue—abortion, putting capital punishment on the ballot, things of that sort that people have some highly personal and emotional views on. Isn't there something to be said for seeking contributions from those people who are specifically interested in those issues; that is, if you're in the XYZ Corporation and you send out a memo to all your executives and shareholders, employees, make a pitch for this particular thing and urge that they make a contribution, isn't there something to be said—then you know that the money comes in, it is from people who really believe [481] in it, whereas if I'm a shareholder and I may or may not be interested in some of these issues.

THE WITNESS: Your Honor, when we're talking about political action committees, probably one of the purposes of a political action committee is to pool and accumulate modest sized contributions in advance. So generally when people contribute to the political action committee, it's in advance of an election and they generally, when they make the contribution, it's perhaps somewhat like a mutual fund in that they're hoping that those dollars will be put to good use. And so when the contribution is made to the political action committee, oftentimes this may be far in advance of the election. And so they—so one does not know who in fact the candidates are going to be probably in the time period that's spent in pooling or accumulating those dollars for the PAC.

THE COURT: Okay.

THE WITNESS: Now, your Honor, if I could just make one other point.

If in fact those contributors to the State Chamber Political

Action Committee or, for that matter, people who join the Michigan State Chamber of Commerce, if in fact they don't like what we do with their funds, be it with the political action committee or in fact the actual program activities of the Michigan State Chamber of Commerce, no one forces them to contribute the next year. They don't need to make another [482] contribution to the State Chamber Political Action Committee nor do they need to renew their membership in the Michigan State Chamber of Commerce.

So, in essence, they can kind of vote on those issues with their pocketbook or their fee and not participate any further if in fact they find those actions of the PAC or the actions of the State Chamber repugnant to their own personal philosophy.

THE COURT: Okay.

BY MR. BOYDEN:

Q And in fact, Mr. LaBrant, the actions undertaken by the Chamber or the Chamber Political Action Committee, in terms of the electoral process, are governed and limited to some degree by the purposes that have been enunciated in the bylaws; is that true?

A I think that is correct.

Q And in direct response to a couple of the issues that Judge Hillman raised in his hypothetical, the Chamber would not be involved in things like abortion or capital punishment, would they?

A I don't believe they would.

Q Is there a difference, as result of the limitation on independent expenditures by the Chamber, is there a difference in the nature and the quality and the amount, and therefore the results, of corporate advocacy when carried out through the [483] political action committee rather than through the corporation itself?

A I think that one of the problems, as I mentioned before, is that our ability to speak is limited by our ability to be good individual fund raisers. The other thing is that an advertisement, I suspect, that carried the disclaimer or the identification of the Michigan State Chamber of Commerce would probably be—perhaps have higher credibility than one carried by the State Chamber Political Action Committee. We don't have any quantifiable data on that, that's my opinion. My opinion is probably based upon the fact that political action committees, for probably since at least 1978 or 1980, have been under a period of public attack by such organizations as Common Cause. "Time Magazine" ran a cover story on political action committees called "PAC Men." CBS News ran a weekly series, basically done by Bill Moyers, on political action committees, rather highly critical of political action committees.

Now, whether in fact amongst the general public that an independent expenditure is addressed to, that the public would have a higher degree of credibility in an ad purchased by the Michigan State Chamber of Commerce, or one purchased by the State Chamber Political Action Committee, in my opinion, the one run by the Michigan State Chamber of Commerce would enjoy probably higher public credibility.

Q Okay. I would like to direct your attention now to the [484] fact that you indeed serve as counsel to the Chamber and ask you whether or not at a point in time in 1985 you concluded, from developments of the law, that the Chamber should investigate the enforcement of its First and Fourteenth Amendment rights with respect to independent expenditures?

A I believe we, in about April of 1985, we began to investigate the opportunity of launching this particular lawsuit.

Q Why?

A We saw—first of all, in March of 1985 the United States Supreme Court issued its decision in FEC versus NCPAC, National Conservative Political Action Committee,-which basically held—which basically dealt with the issue of independent expenditures. And in that particular case the court restated its position from Buckley that independent expenditures were entitled to a higher constitutional protection than that of contributions, and that in fact, as far as independent expenditures was concerned, the court could find no compelling state interest to restrict independent expenditures as they could find with contributions, because there was not the same potential for a financial quid pro quo, since there was no coordination with the candidate. Now, given that fact of the NCPAC decision, we saw a window of opportunity available to us, so to speak, to redress an ancient wrong. There was a special election occurring in the Grand Rapids area in the 93rd House [485] District on June 10th. We felt that if we instituted this particular lawsuit in that time span, we might have an opportunity to get a judicial ruling on this particular case in time for participation in the 1986 election.

Q As a result, were steps undertaken to go forward and investigate the possibility of placing an ad in the Grand Rapids Press as an independent expenditure of the State Chamber of Commerce?

A Yes, they were.

Q What cooperation or coordination of efforts were involved with the Chamber and Representative Banstra or any

of his campaign organizations or anybody else that would make that a coordinated effort?

A Absolutely none.

Q Would the ad then have been a truly independent expenditure?

A Yes, it would have.

Q Why was the Chamber ultimately restrained from publishing that ad?

A Because this Court did not grant injunctive relief, and we didn't want to pursue the placement and payment for that ad because of Mr. Gartner's ability to come and prosecute us for the placement of that ad.

Q And you were not willing, even to right an ancient wrong, to go to jail for that?

[486] A Perhaps I would have, but President Barrett was not.

(Laughter)

Q (Laughter) Okay. What distinguishing characteristics do you know about which would justify the differential treatment which Section 54 commands respecting corporations, on the one hand, as opposed to other unincorporated associations and labor unions and the like on the other?

A As they relate to independent expenditures?

Q As they relate to independent expenditures. Thank you for clarifying that.

A I—I know of none, because it seems in my opinion that independent expenditures is an area of pure speech.

Q How about the distinctions which Section 54 draw between media corporations and corporations with respect to independent expenditures, do you know of any distinctions which would justify the infringement of the constitutional freedoms on the part of corporations?

A I'm not aware of any.

Q In fact, do the independent expenditures for advocacy, which media-related corporations undertake, have in your experience a potential for a significantly higher impact than independent expenditures, if allowed, by corporations?

A I think studies show that basically editorials enjoy higher public credibility than paid advertisements.

THE COURT: I can't resist on that note that I was

* * *

LaBrant-Cross

[495] membership of the State Chamber?

A Section 55 of the Michigan Campaign Finance Laws sets out in some detail who we can solicit. Primarily it is individuals who join the State Chamber as individuals or those shareholders or managerial employees of member corporations whose corporation is a member of the Michigan State Chamber of Commerce.

Q All right. What is the pool, though, of individuals that are eligible for making contributions to the State Chamber PAC?

A That is a number that, frankly, I am unaware of how large it would be.

Q Fifty thousand, perhaps?

A I suspect that that would be—that would probably be—I don't know. It might be—it certainly would not be less, if we are talking about shareholders.

Q Isn't it true, Mr. LaBrant, that one of the functions of the State Chamber, in fact, one of your responsibilities, is to assist other organizations that want to start a political action committee?

A That's correct.

Q And that that hasn't been a major priority of the State Chamber to organize political action committees within corporations, trade and professional associations, and local chambers of commerce?

A It has been a priority. It's been a higher priority, [496] perhaps, in the period of time directly after the effective date of this Act in 1977 and 1978 when this was a brand new concept.

Q All right. Isn't it true that in 1976, prior to the enactment of the Campaign Finance Law, that there were less than 30 business and professional political action committees in Michigan?

A That's what records indicate.

Q All right. And that in 1978, isn't it correct that that number grew to 143?

A That's correct.

Q And in 1980 that number grew to 177?

A That's correct.

Q And isn't it true that today there are more than 200 political action committees sponsored by corporations, trade and professional associations and local chambers of commerce?

A That's correct.

Q Well, isn't it true, Mr. LaBrant, that these efforts of the State Chamber have been successful in forming and organizing political action committees that are sponsored by the business sector in Michigan?

A I believe that's correct.

Q Isn't it true that in 1980 the State Chamber persuaded the Grand Rapids Area Chamber to form a political action committee?

A That's correct.

[497] Q In your role as vice-president of the State Chamber, hasn't the Chamber published a document entitled "Mini PAC Kit for Chambers of Commerce, Trade Associations and Small Businesses"?

A That's correct.

Q All right. And could you describe for the Court what is these—what are these Mini PAC Kits?

A The kit was developed basically to serve a need of how one would go about establishing a separate segregated fund under the Michigan Campaign Finance Law. And so what we tried to do was to put in a guide book the steps and procedures necessary to follow and the paperwork necessary to be filled out in establishing a political action committee under the Michigan Campaign Finance Law.

Q All right. So, isn't it true, that it's in essence a step-by-step manual for establishing, organizing and operating a political action committee in Michigan?

A That's correct.

Q All right. And in the Mini PAC, doesn't it include sample solicitation letters?

A That's correct.

Q Sample board of directors' resolutions adopting proposed bylaws for political action committee?

A That's correct.

Q Sample statement of organizations that have to—a sample [498] statement of organization form that has to be filed with the Michigan Department of State?

A That's correct.

—

Q In essence, then, it's everything you wanted to know about forming and organizing a PAC is contained in the Mini PAC kits that have been prepared by the State Chamber; isn't that an accurate statement?

A Everything you—we needed to know? Perhaps not, but —

Q But it's a thorough step-by-step manual for establishing —

A That's correct.

Q — and operating a political action committee. Does it also include sample payroll deduction authorizations?

A Correct.

Q And also includes sample forms that have to be filed with the Secretary of State, including organization forms?

A That's correct.

Q Reporting forms? In fact, isn't it true that the Mini PAC kit includes form that have already been filled out in order—sample forms to assist people who are putting together a political action committee?

A They demonstrate how the form should be filled out.

Q Isn't it true that in October 1981 the State Chamber sponsored a statewide conference on chamber political action?

A Yes, we did.

Q And that was held in Lansing?

[499] A That's correct.

Q What was the purpose of that conference?

A To encourage local chambers of commerce to organize political action committees.

Q All right. And in fact after the conference isn't it true that State Chamber's staff spoke at local chamber board meetings across the state encouraging them to form political action committees?

A That's correct.

Q And that has also been successful, hasn't it?

A Yes.

Q Isn't it true that in June of '84 the State Chamber sponsored a chamber PAC campaign management institute?

A That's correct.

Q And what was the purpose of the institute?

A To invite in candidates who were running for state and local office to attend the campaign management seminar on ways to get elected to public office.

Q All right. And didn't the State Chamber form the Political Action Committee Exchange Council?

A Yes, we did.

Q And what is that?

A It is a forum for PAC managers to meet periodically to share information, ideas and techniques on the administration and operation of a political action committee.

[500] Q And is this council mainly composed of representatives from the business community?

A That's correct.

Q Isn't it true that in fact even prior to 1981 the State Chamber sponsored and ran PAC regional workshops and conferences in various spots in the state?

A We did that in particular in 1977 and in 1978.

Q What was the purpose of those conferences?

A To encourage corporations and trade and professional associations to establish political action committees.

Q Isn't it true that the Michigan State Chamber PAC is the largest state chamber PAC in the United States among those states that prohibit direct corporate contributions to state candidates?

A That is correct.

Q Isn't it true that the State Chamber PAC set a record in 1974 raising more than $102,000 during the 1983-1984 election cycle?

A That is correct.

Q Isn't it true that in November of 1984 the State Chamber PAC endorsed 67 House candidates, 64 of such candidates won election for a 96-percent win ratio?

A I believe that is correct.

Q Isn't it true that in the August 1984 primary election the State Chamber PAC was financially involved in 18 primary [501] contests, and in 15 of these races the State Chamber-endorsed candidate was successful?

A I believe that is correct.

Q Isn't it true that in the two special Senate elections held in the spring of 1984, after the recall of Senators Mastin and Serotkin, that the two State Chamber PAC candidates were successful?

A That's correct.

Q Isn't it true that in the November 1984 general election the State Chamber Political Action Committee contributed more than $22,000 to three endorsed candidates from Michigan to the Supreme Court, two of which were victorious?

A That's correct.

Q Isn't it true that in the June 1985 special election for the Banstra seat, that the State Chamber-endorsed candidate was successful?

A That's correct.

Q Isn't it true that in November 1980 the State Chamber PAC endorsed 66 State House candidates, and 66—excuse me, 63 of them were victorious for an 87 percent win ratio?

A I don't know, but I suspect that figure is correct.

Q All right. Isn't it true that in July of 1985 the State Chamber PAC released nine computers, printers and software packages and loaned them to nine legislators?

A And we—we went through that process and provided them [502] as in-kind contributions.

Q And how many —

A Nine.

Q Nine legislators. Does the State Chamber of Commerce expend corporate funds for the purpose of communicating to the public its views on legislative issues?

A Yes, we do.

Q And I show you, Mr. LaBrant, a copy of proposed Defendants' Exhibit No. 11. Would you please identify that?

A This is an advertisement that was placed in the Tuscola County Advertiser.

Q And who paid for that ad?

A The Michigan State Chamber of Commerce.

Q And could you just briefly paraphrase the contents of that ad and describe for the Court the purpose of it.

A This ad was placed in the context of legislative debate

over the issue of a vote that occurred in the State House of Representatives on a resolution calling for a federal balanced budget resolution. The Michigan State Chamber of Commerce was part of a coalition of organizations that was actively lobbying to have the resolution passed. In the process of trying to obtain legislative passage of that resolution we conducted a very active grassroots lobbying campaign identifying supporters in key legislative districts, communicating with those individuals who had indicated support of this resolution, and [503] encouraging them to contact their legislators to make their views known on this particular issue. In floor debate Representative Dick Allen spoke out against our lobbying tactics and basically said that he felt that all of these phone calls that were placed to constituents were abusive, and so—and following that particular legislative floor debate, we placed an ad in the Tuscola County Advertiser informing the constituents of Representative Dick Allen as to his comments and to his vote on that particular resolution.

Q And that ad was paid for by the Michigan State Chamber of Commerce?

A That's correct.

MR. GARTNER: Your Honor, I would move the admission of Defendants' Exhibit No. 11.

MR. BOYDEN: Is that an ad which was previously identified in conjunction with the pretrial order?

MR. GARTNER: No, it was identified last month when we came to trial on the first day.

MR. BOYDEN: When we met, and marked at that time and presented to us?

MR. GARTNER: I believe so.

MR. BOYDEN: Exhibit 11—if I could take a minute, your Honor, I will check the record on it.

THE COURT: All right.

MR. PERRONE: That exhibit was shown to us and I [504] believe marked Defendants' Exhibit 11.

MR. BOYDEN: Okay. Then we would not object, your Honor.

THE COURT: All right. It is received.

MR. GARTNER: Thank you.

(Defendants' Exhibit 11 was offered and received.)

BY MR. GARTNER:

Q Did the Michigan State Chamber of Commerce pay for similar ads in other newspapers across the state at this time?

A I believe that this was the only ad paid for by the Michigan State Chamber of Commerce in this context.

Q All right. Would you agree with me, Mr. LaBrant, that this ad is an example where the State Chamber is communicating its views to the public with respect to public issues?

A Yes, I would agree.

Q All right. Are you aware of a recent poll that was commissioned by the Michigan State Chamber of Commerce?

A I'm aware of the polls that are commissioned by the Michigan State Chamber of Commerce.

Q I'm referring to a poll that dealt with the issue of public financing and political action committees.

A Yes.

Q All right. And was that a poll commissioned by the State Chamber of Commerce?

A That's correct.

[505] Q And isn't it true that that poll found 52 percent of the public aware of the view that political action committees should be allowed to contribute financially to political candidates?

A That's correct.

Q You also testified earlier, Mr. LaBrant, that the Banstra ad that was attached to the original Complaint filed in this case, and has been marked as an exhibit by plaintiff, that that ad did not run in the Grand Rapids Press; isn't that correct?

A That's correct.

Q And—but it's true that the Chamber PAC could have run that ad; isn't that correct?

A That's my understanding.

Q All right. Why didn't the Chamber run that ad, the Chamber PAC run that ad?

A We made the decision just not to run it.

Q All right. Isn't it true that one of the reasons for your

decision was that it wasn't necessary that your polls indicated that Mr. Banstra was going to be the victor?

A That was part of our decision-making process.

Q Okay. Mr. LaBrant, I'm showing you two exhibits that have already been accepted into evidence, PAC directories from 1979, 1984. Just for the record, could you describe what they are and how the information is compiled?

A Mr. Gartner, the first document that I have here before me [506] is the document entitled "Directory of Business and Professional State Level Political Action Committees in Michigan" that was compiled by the Political Action Division of the Michigan State Chamber of Commerce April 1, 1979. This directory was compiled by myself by going through Department of State records, statement of organizations that were filed with the Campaign Finance reporting office of the Department of State.

The other document I have here is a 1984 Michigan PAC directory, basically which is an update of the 1979 PAC directory, and basically periodically updated every year or every two years.

Q Are these documents or the most recent document, are those available to members of the State Chamber of Commerce?

A They're available to anyone.

Q And have you given copies of the '84 document to people that have requested it?

A Hundreds.

Q Hundreds? Did the State Chamber of Commerce

contribute money towards the reapportionment lawsuit that was brought in Oakland County of 1984?

A Yes, we did.

Q All right. Does the State Chamber expend corporate funds for the purpose of lobbying?

A Yes, we do.

[507] Q Does the State Chamber expend corporate funds for the purpose of making contributions to ballot question committees?

A Yes, we do.

Q With respect to your testimony on direct exam you—and correct me if I'm wrong, but you gave certain testimony regarding the position of the State Chamber and how it's affected by the independent expenditure ban contained in Section 54 of the Campaign Finance Law. Do you recall that testimony?

A Yes, I do.

Q Isn't it true that within the last one or two sessions of the legislature, that worker's compensation reform was enacted?

A Worker's compensation reform was enacted in December of 1981.

Q All right. And isn't it true that within the last, let's say few sessions of the legislature, unemployment compensation reform was enacted?

A I believe it has.

THE COURT: Let me just interrupt for a moment, be-

cause I was still looking at the exhibit that you said that you put together, this directory.

THE WITNESS: Yes.

THE COURT: You show a list of the PACs, total business and professional PACs, you show roughly a three-million six figure. Then you have listed separately the '81 —

* * *

[510] THE COURT: Fine. All right.

BY MR. GARTNER:

Q Mr. Barrett (sic), isn't it true that at the annual meeting of the United States Chamber of Commerce that was held in, I believe, 1985, the Michigan Chamber PAC network was spotlighted as one of four program models that state and local chambers ought to implement?

A You're addressing me, and yes, the answer is yes. You called me Mr. Barrett, that's —

Q Oh, I'm sorry. Thank you. I do know the difference.

All right. And isn't it also true that in a speech that you gave to the Greater Detroit Chamber of Commerce in January of 1970—1986 you said that the fifty chamber PACs in Michigan in 1982-'83 were more than had been established in the rest of the United States combined?

A That's correct.

MR. GARTNER: That would conclude my questions, your Honor.

THE COURT: All right.

REDIRECT EXAMINATION OF DONALD JOSEPH LABRANT

BY MR. BOYDEN:

Q Mr. LaBrant, you don't deny for a moment that the activities of the Chamber Political Action Committee under your leadership have been successful, do you?

A Not at all.

* * *

(Witness: Webster Buell)
Buell - Direct

[517] Q Now, pursuant to your function as liaison with the department of Attorney General, were you requested last year to compile some campaign finance data?

A Yes, I was.

Q All right. And can you tell the Court what you did and how you went about it in compiling certain data. And before we get there, let me show you proposed Defendants' Exhibits 4-A and 4-B, and then could you please answer my question.

A Okay. These—the exhibits are printouts that resulted from our work in compiling data under the Campaign Finance Act. The printouts are dated January 30th, 1986, and they have reference numbers of CF0030 and CF0040. The—we began to put together the data that we could utilize in these printouts back in late summer or early fall of 1985. Up until that time the department had no systematic compilation of data showing receipts and expenditures by independent and political committees over the four general election cycles that had taken place since the Acts went into effect.

We did, however, have a list of all the independent political committees by their identification number, and we also had data that had been compiled in each election cycle indicating receipts and expenditures. We devised a program and method for taking that data and matching it with the data that we already had for—on names and identification numbers of committees.

[518] We also attempted to categorize committees on the various categories shown on the printout.

Q How did you do that?

A We set up the categories based on some work that had been done by a former employee of the department. He had prepared an index of independent political committees and put them in categories, four major categories and subcategories under those major categories. The four major categories being business, issue-oriented, party-related, professional—and I guess there were really five or six categories. He also had labor and miscellaneous.

Q What is the difference between computer run CF0030 and computer run CF0040?

A The printout 0030 shows them by these categories that I've just described, shows the committees grouped in those categories. So under business you would have business, subcategory of agriculture, auto dealers, auto manufacturers, real estate, and so on.

Q And you selected the names that fell under each category?

A I relied on that previous work I just described, but I basically decided to use these categories. I also made some modifications where I knew that committees had been miscategorized, or I believed them to be miscategorized.

Q Looking at the computer run, I believe, which is Exhibit—proposed Exhibit 4-A. At the top, Cattlemen's Political Action [519] Committee, and looking at 1984, there are figures for receipts and expenses.

A Yes.

Q Can you tell the Court what are receipts, what are expenses, and where these numbers came from?

A The numbers on the printout come from a secondary report that had been generated within the department by personnel at the elections division. They showed this in a statistical report that they did on the 1984 election. That, in turn, has been taken directly from the reports of the various committees.

The receipts represents money coming into the committee, the monies the committee received from whatever sources they rely on.

The expenses is a figure representing the money going out of the committee during that period of time.

Q All right. And can you briefly describe to the Court the process that actually led to the production of these two computer runs.

A Well, the process was a fairly cumbersome one because our department doesn't have much personal computer processing capacity so we have to rely, if we want to do it electronically, rely on a mainframe computer, which requires substantially programming, which is why it took us some time to devise this. But, as we programmed it and put this data together, and put it in the various categories, we generated the [520] printouts and subsequently made corrections where we found that there had been mistakes in putting them in.

Q Now with respect to computer run 0040, can you describe how you identify the corporate committees?

A Yes. The Michigan law does not require separate segregated funds of corporations to indicate that they are affiliated with a corporation, so we had to go to other sources. The first source that we utilized was the PAC directory for 1984 put out by the Chamber of Commerce which lists affiliated committees and the corporations that they are affiliated with or organizations.

Q What did you do after that?

A We then found that that did not categorize a substantial portion of the committees, and so we mailed out a letter and postcard to all the active committees that were currently registered at that time. And the letter—it was actually a memorandum signed by Secretary of State Austin asking the committees to return the card and indicate on the card whether they were a separate segregated fund affiliated with a corporation or whether they were not.

We affixed to each of the cards a mailing label from the committee so that we could subsequently identify which committees we were talking about. We sent out approximately 800 of these cards. We got a return, a substantial return on the cards. And then we also went and telephoned committees that [521] had not returned cards in an effort to have them send the cards in or tell us by telephone whether they are a separate segregated fund or not. The total result was that 625 or -6 that, estimated, a number of committees responded to these requests, either by card or by telephone.

Q And what did you do about the committees that didn't respond either by mail or by phone?

A The committees that we had identified from the Chamber PAC directory that did not answer, that we had identified as corporate committees, we left as corporate committees. Any other committees we categorized as noncorporate.

Q Mr. Buell, have you done a sample of the data contained in the proposed Exhibits 4 and A to determine its accuracy?

A Yes, we did.

Q And what did you do and what were the results?

A Well, we sampled from the data for 1980, 1982, and 1984, after checking with a statistician who works on occasion for the department, he advised us that an adequate sample for these purposes would be 49 instances of receipts and expenditures, 49 or 50. We actually drew—we were trying for 50, but somehow we only drew 49. Out of the 49 sampled, we found that the number appearing on the printout was accurate in 44 of the 49 cases —

Q What is that percentage?

A — for expenditures. It's about 90 percent, 89.7, I [522] believe. For receipts, 43 out of 49 were accurate. The—and the sample was done not from the intermediate reports that we had relied upon to prepare the printout.

Q You went back to the original data?

A Yes. We had analysts go back to the original reports to determine what numbers appeared there. The reason that we did not use 1978 data is that the Campaign Finance Law requires us to destroy all reports and microfilm of reports after a five-year period. So that data is unavailable, from us anyway.

Q So in that case, for '78 then, what did you rely on?

A From '78, we did not sample the '78 data.

Q But what did you rely on in compiling the data on the two computer runs?

A The intermediate reports that the department handled.

Q All right. Do these two computer runs contain committees that are commonly referred to as unified committees

A Yes. There are a number of committees that are on this printout who not only are registered with the State of Michigan with the Secretary of State's office, but are also registered with the Federal Election Commission, and in some cases there are monies that were contributed to federal candidates appearing in the figures that are on our printout.

Q All right. Why was—why were those unified committees included in the computer printout?

A Well, they are independent political committees that are [523] registered here in Michigan. In fact, in some cases they are quite substantial.

Q And what is—what is proposed Exhibits 4-A and 4-B, what are they supposed to show?

A These show receipts and expenditures for the elections in 1984, 1982, 1980, and for the total election cycle in 1978. The reason I put it that way is that for the '80, '82, and '84 periods, we do not have data for special elections that occurred during those years.

Q Isn't it true, though, that you put that data in another document?

A Yes. We subsequently compiled special election data.

Q All right.

MR. GARTNER: Your Honor, I would move the admission of proposed Exhibits 4-A and 4-B.

(Defendants' Exhibits 4-A and 4-B were offered.)

THE COURT: Which is 4-A and which is 4-B?

THE WITNESS: The way to identify it is look at the very top.

THE COURT: One has corporate and one has business?

THE WITNESS: Yes. The one that starts out business is the 4-A.

THE COURT: That's 4-A. And the one that says corporate is 4-B?

Buell-Voir Dire

[524] THE WITNESS: Correct.

THE COURT: All right.

MR. PERRONE: Your Honor, I think it's my turn to give Mr. Boyden a rest and examine the witness, if I may, on voir dire on these two exhibits.

THE COURT: Fine.

VOIR DIRE EXAMINATION OF WEBSTER BUELL—

BY MR. PERRONE:

Q Mr. Buell, you indicated that these reports were taken—were compiled from secondary reports; is that right?

A Yes.

Q They were not constructed from the primary document?

A No.

Q You indicated that some sampling was performed. Was that sampling done since your deposition taken on April 16th where you told me no sampling was done?

A Yes.

Q You indicated that there was an error right in the sampling. In the case of expenses, 5 out of 49 were in error, and in the case of receipts, 6 out of 49 were in error; is that right?

A There was a— I don't know if you're looking at the same document that I'm looking at, but there was a—the report we had from the statistician, he assumes that there were 45 out of 49 were error-free in the expenditure side. That was the

* * *

[531] which, of course, then leads to who the sponsoring corporation or unincorporated enemy is, so the Court can have a look at what the level of spendings have been in this State.

One of our claims in this case Your Honor, is that the Plaintiff Chamber of Commerce First Amendment rights are

not even impaired by this statute. And that has been demonstrated through the activities of the State Chamber that have been explored on cross-examining witnesses of the State Chamber. And, likewise, we are attempting to show not only the activities of the State Chamber, but various other corporations in the State of Michigan.

THE COURT: Well, I would agree with plaintiff's counsel. This is not a PAC case, as such, but certainly the testimony, and I think the determination by this Court of the specific requests by plaintiff in his amended Complaint deal with independent expenditures. It can't be looked at without an overall view of the overall role of the corporations and PACs, and consequently the Court will receive Exhibits 4-A and 4-B.

(Defendants' Exhibits 4-A and 4-B were offered and received.)

THE COURT: I might also note that Mr. Mayberry's computations that the Court received, as I recall, were broader than just independent expenditures. So at least this is consistent with that earlier ruling.

* * *

[536] Q All right. Were you in the courtroom, Mr. Buell, when Mr. Mayberry made the statement that to the—to his knowledge there was only one incorporated union in the State of Michigan?

A I guess I was.

Q All right. And during the adjournment was a request made to you to search the records of the Corporations and Securities Bureau to determine whether the statement of Mr. Mayberry was true?

A That's correct.

Q Did you conduct such a search?

A Yes.

Q And what did you find?

A Well, we found, in looking through microfiche from the incorporation division, that there were a number of entities which appeared to be labor unions that were incorporated as nonprofit corporations.

Q All right. Mr. Buell, I show you proposed Exhibits 14 through 36, and can you just very briefly describe what they are.

A These are certified copies of articles of incorporation that are in the files of the Michigan corporation division for the organizations that were identified, and they indicate what—who the organization is and what it is.

Q All right. So isn't it true that these are 23 articles of incorporation of incorporated labor organizations in the State [537] of Michigan?

MR. PERRONE: I am going to object to the question, your Honor. I don't think there has been any foundation as to what a labor organization is and how it was determined that these were labor organizations for which the articles were searched and retrieved.

THE COURT: Well, perhaps you could lay a foundation for that.

MR. GARTNER: All right.

Q Mr. Buell, how did you determine whether an entity was a labor organization?

A Well, my understanding is that a labor organization is an organization that represents employees of a business or government agency who ban together to engage in collective bargaining with the employer to effectuate a contract regulating wages, hours and working conditions.

Q Did you review the purpose clause on all these corporations?

A I looked at them, yes.

Q And is it your determination that these proposed exhibits consist of labor organizations that have been incorporated in the State of Michigan?

A These organizations, yes, appear to be labor organizations.

Q All right.

[538] MR. GARTNER: I would move the admission of proposed Exhibits 14 through 37, I believe—36.

THE COURT: They'll be received.

MR. BOYDEN: Your Honor, don't we have a chance to give the Court a position with respect to these?

THE COURT: I didn't see any signs of any objection. That was the only —

MR. BOYDEN: Mr. Perrone was on his feet, your Honor.

THE COURT: I'm sorry. It is just getting late in the morning and —

MR. BOYDEN: I understand that.

THE COURT: — I'm not at any time not give you a full opportunity to make any objection you wish.

MR. PERRONE: I have one or two voir dire questions before I make my objection, your Honor.

THE COURT: Fine. Go right ahead.

VOIR DIRE EXAMINATION OF WEBSTER BUELL

BY MR. PERRONE:

Q Mr. Buell, do you any personal knowledge with respect to the organizational nature or operations of any of these 23 corporations?

A Personal knowledge?

Q Yes.

A No.

Q Did you contact any of these organizations and ask them [539] what kind of activities they actually engage in?

A No, I did not.

MR. PERRONE: Your Honor, I would, on behalf of the plaintiff, object to the entry of these 23 rather lengthy documents and clutter up our record here today for a number of reasons. One is the same reason that the Court used to deny the rebuttal documents we attempted to put in during the plaintiff's Exhibits 15 and 16, and that is, these haven't been previously marked. We were unaware of them until yesterday when they were brought in. They are lengthy documents.

Secondly, the information is certainly hearsay. We have no ability to cross-examine as to what these organizations—what they really are and what they really do. We have an individual who has gone and looked at the purpose clauses in a number of filings with the corporations and securities bureau and determined that they are probably labor organizations. And we've spent an awful lot of time in this case with witnesses defining the organizational status and nature and operations and activities of the Michigan State Chamber of Commerce to satisfy the Court that it is a nonprofit membership organization trade association and detailing what kind of political involvement they had and what kind of education involvement and the membership they had, what other activities they were involved in.

We don't have any of this information with respect to [540] these organizations. We don't even have a workable definition of what a labor organization is unless Mr. Buell has been qualified as an expert in labor law. And for those reasons, in addition to not cluttering up the record, we would object to the entry of these 23 exhibits.

MR. GARTNER: Your Honor, these exhibits are rebuttal exhibits, which is totally consistent with this Court's pretrial order that rebuttal evidence need not be provided in advance. These records are certified and admissible on their own under the federal court rules, and we can argue in our briefs as to whether these are labor organizations or not, but these documents are admissible on their own, and we're asking the Court to receive these documents.

MR. PERRONE: That was our argument with respect to the certified copies of Plaintiff's Exhibits 15 and 16 from the federal archives office, your Honor, as rebuttal exhibits.

THE COURT: Let me see what those exhibits were.

MR. GARTNER: Those were the stipulated —

MR. BOYDEN: Facts from the —

MR. GARTNER: — facts from the two cases arising out of litigation in 1978.

THE COURT: Well, first of all, as I recall, with Exhibits 15 and 16, they were in fact stipulations in a particular lawsuit that was filed in the Southern District of New York, and, although I may have mentioned at the time that [541] they may have been untimely, it's my recollection that the principal concern the Court had was the effect of a stipulation in a court that—in a case in which the Court had no knowledge or background of the stipulation. In my own experience of stipulations in particular lawsuits, they may be done for—to save time or they may not have any particular value in that lawsuit and therefore they would be willing to stipulate in that lawsuit but would not expect that they would be—somehow be stipulated as—or to be used in other cases.

As I look at these Exhibits 14 through 37, although I agree that they may kind of clutter up the record, just taking a quick look, it's the Lincoln Park Police Officers Association, the Warren Police Officers Association, the Wyandott Fire Fighters Fraternal Organization, Birmingham Police Officers Association, Royal Oak Police Officers Association, MEA, Michigan State Employees Association, Local 429 of the International Allied Industrial Workers of America, the Police Officers Association of Michigan, Fraternal Order of Police Lodge 95, Detroit Fire Fighters Association. Well, it's pretty obvious that these are employee groups. I think as rebuttal exhibits, that I'll go ahead and receive them.

MR. GARTNER: Thank you, your Honor.

THE COURT: And for what the relevance, if any, of those documents can be argued at some later time.

(Defendants' Exhibits 14 through 37 were offered and [542] received.)

CONTINUED DIRECT EXAMINATION OF WEBSTER BUELL

BY MR. GARTNER:

Q Mr. Buell, I'm showing you copies of proposed Exhibits 12 and 13, and can you identify those for the record, please?

A These are microfilm copies of advertisements that I secured that were apparently paid for by the Bay Area Chamber of Commerce political action committee and appeared in issues of the Bay City Times.

Q Can you tell the Court how you found these ads?

A Yes. As part of the development of data for the expert witness, we went through reports of various chamber PACs, and when we looked at the Bay Area Chamber PAC, which was one of the larger chamber political action committees, we found what I thought was unusual, a report of an independent expenditure by a PAC. And so then I went to the Michigan State Library, State of Michigan Library, actually, and looked at microfilm of the Bay City Times, which was the reported recipient of the expenditure, and the dates about the time the expenditure was made, and found these ads appearing in the paper.

Q Is that your handwriting that appears on top of the two ads?

A Yes, it is.

Q All right. And you then obtained copies of the microfilm?

A Yes.